

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

1			
2			
3	GROENEVELD TRANSPORT	)	
4	EFFICIENCY, INC.,	)	
5		)	Judge Nugent
6	Plaintiff,	)	Cleveland, Ohio
7		)	
8	vs.	)	Civil Action
9		)	Number 1:10CV702
10	LUBECORE INTERNATIONAL,	)	
11	INC.,	)	
12		)	
13	Defendant.		

TRANSCRIPT OF PROCEEDINGS HAD BEFORE

THE HONORABLE DONALD C. NUGENT

JUDGE OF SAID COURT,

ON TUESDAY, OCTOBER 18, 2011

**Volume 4**

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Wilson - Direct

1 TUESDAY SESSION, OCTOBER 18, 2011, AT 8:56 A.M.

2 THE COURT: Good morning, ladies and  
3 gentlemen.

4 THE JURY: Good morning.

08:56:58 5 MS. MICHELSON: Thank you, your Honor.

6 DIRECT EXAMINATION OF GAIL WILSON

7 BY MS. MICHELSON:

8 Q. Ms. Wilson, good morning. How are you today?

9 A. Good. Thank you.

08:56:58 10 Q. Before we get to your damages calculation, we started  
11 on that yesterday before we broke. I'd like to ask you a  
12 few other questions, and specifically about Exhibit 39.

13 Ms. Wilson, first of all, Fuel Systems, I believe the  
14 testimony's been, was a Groeneveld dealer or distributor  
08:56:58 15 until the third quarter of 2009. Do you recall testifying  
16 to that effect?

17 A. Yes, that's correct.

18 Q. And what -- how many -- how much -- how large a volume  
19 of a distributor were they for Groeneveld historically prior  
08:56:58 20 to September 2009?

21 A. In recent history, going back to 2006, it was  
22 \$975,000, and the 2009 sales were roughly \$326,000.

23 Q. So there -- so like a \$600,000 dip attributable to  
24 the -- to the loss of FSI in that fourth quarter?

08:56:58 25 A. Sorry. Can you repeat that?

Wilson - Direct

1 Q. Yes, I will. So let me just understand. In 2008,  
2 what were gross sales to FSI?

3 A. Okay. So I'll just summarize to give a bit of an  
4 idea.

08:56:58 5 In 2007, it was \$725,000; 2008, \$425,000  
6 approximately; in 2009, \$326,000.

7 Q. Okay. And were there any sales at all to FSI from  
8 Groeneveld in 2010 or beyond?

9 A. No. There were no sales roughly in the fourth quarter  
08:56:58 10 of 2009 onward.

11 Q. And about how many independent distributors or dealers  
12 did -- does Groeneveld have in the United States in the --  
13 in -- up until Lubecore's entry to the scene?

14 A. The distributor level, there were approximately eight  
08:56:58 15 distributors.

16 Q. And in terms of sales volume, where did FSI rank among  
17 those eight?

18 A. In the years, say, for instance, 2006, 2007, they were  
19 Number 1.

08:56:58 20 Q. In 2008?

21 A. Number 2.

22 Q. And who was Number 1?

23 A. A distributor in Utah.

24 Q. And about what ranking were they on track to be in  
08:56:58 25 2009 but for the loss in that September time period?

Wilson - Direct

1     **A.**     I don't have my full data in front of me, but my best  
2     recollection is that they were second, yes.

3     **Q.**     Okay. Were other independent distributors lost to  
4     Fuel Systems in this late 2009, 2010 time period? If I need  
08:56:58 5     to rephrase my questions, you just let me know. Okay?

6     **A.**     So you ask are there other distributors lost to --

7     **Q.**     That Groeneveld lost to Lubecore other than Fuel  
8     Systems during this time frame?

9     **A.**     There were other distributors that -- or yes, there  
08:56:58 10    were. There were other distributors that are now Lubecore  
11    distributors.

12    **Q.**     Okay.

13            And I'd like to show you what you testified to about  
14    yesterday was this Exhibit 39. Thank you. And I believe  
08:56:58 15    you testified that this was -- just to get us all back on  
16    the same page literally, Groeneveld's sales data for EP-0  
17    sales into the U.S., '05 through current, correct?

18    **A.**     Yes, yes.

19    **Q.**     And there -- and looking in the USA column  
08:56:58 20    specifically, really across the board, there is a dip from  
21    '08 to 2009. Do you see this here?

22    **A.**     Yes.

23    **Q.**     And what factors are those attributable to, that dip?  
24    What is that attributable to?

08:56:58 25            MR. ANASTOS: Objection.

Wilson - Direct

1 THE COURT: Overruled.

2 THE WITNESS: There are many influences that  
3 go into that dip. For certain, for sure, part of it is just  
4 the drop in the marketplace with the hit of the lack of  
08:56:58 5 financing, and the tightness in the capital markets meant  
6 that some of our customers were unable to purchase systems  
7 or lack of confidence, you know, just the general economic  
8 downturn, and as well, missing a full quarter of the sales  
9 that would have otherwise gone through our distributor Fuel  
08:56:58 10 Systems and other customers that may have purchased  
11 competitive product.

12 Q. Approximately what percentage of Groeneveld's total  
13 EP-0 sales are attributable to the pump specifically and  
14 what percentage are -- is attributable to the loose parts or  
08:56:58 15 other parts and supplies, you know, the timers or the  
16 metering blocks, those sorts of things?

17 A. I think the best way to sort of describe it is if we  
18 sell to a distributor, a total system, which is the pump and  
19 all the component parts to do the installation on the  
08:56:58 20 customer's vehicle, roughly 35 percent of the total value is  
21 for the pump. The rest are for the other parts, the  
22 manifolds, the lines, the complete system.

23 But, on top of that, there are also sales of parts to  
24 customers for regular service items.

08:56:58 25 Q. And approximately what percentage of your gross sales

Wilson - Direct

1 are attributable to those sorts of things in the course of  
2 business?

3 **A.** To -- sorry. Which part, what sorts of things do you  
4 mean?

08:57:41 5 **Q.** Okay. The noncomplete system sales, the parts, the  
6 fittings, that sort of thing, about how much of the gross  
7 sales on the EP-0 parts and pumps in -- on your Exhibit 39,  
8 what is not for complete systems, but for fittings and  
9 components, outside of the pump?

08:57:41 10 **A.** Okay.

11 Just to sort of clarify, because I'm not sure if I'm  
12 going to be able to tell you, you know, with precision, the  
13 split of sales. So we sell complete systems, and we sell  
14 parts. Within a complete system, there are parts.

08:57:41 15 So roughly within an EP-0 product group, 70 percent of  
16 what we sell relates to complete -- the complete solution,  
17 and the rest for parts. So --

18 **Q.** Got it. I got it. Thank you. Thank you very much.

19 Now, there are -- we've obviously heard a lot about  
08:57:41 20 Fuel Systems and its former relationship with Groeneveld.  
21 Was that relationship still in effect, this distributorship  
22 relationship with Fuel Systems still in effect when Fuel  
23 Systems also started dealing with Lubecore? Were they  
24 handling your product at the same time they were handling  
08:57:41 25 the Lubecore?

Wilson - Direct

1 MS. ZUJKOWSKI: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: Yes.

4 Q. Okay.

08:57:41 5 And now, one of -- another independent distributor  
6 that works with Lubecore these days, Lubecore Florida, there  
7 are some gentlemen affiliated with that distributorship that  
8 also had relationships -- business relationships with  
9 Groeneveld?

08:57:41 10 A. Yes, there was what we call the relationship in  
11 installing dealers, that individual and his group of people.

12 Lou Boronco was an installing dealer for Groeneveld in  
13 Florida, and I believe he is part of the Lubecore Florida  
14 group.

08:57:41 15 Q. Okay.

16 And that belief is derived from information on the AMS  
17 autolubeparts.com web site?

18 A. Yes.

19 Q. And a gentleman named Chad Cole, are you familiar with  
08:57:41 20 that name?

21 A. Yes, Chad Cole was previously Groeneveld's service  
22 manager in Florida.

23 Q. And I -- on another distributorship, Lubecore  
24 distributorship we heard about and appears on that website,  
08:57:41 25 Automated Solutions in Ohio. You've heard of that before?

Wilson - Direct

1     **A.**     Yes. That was the website that we looked at  
2     yesterday.

3     **Q.**     And are there people involved in that distributorship,  
4     Lubecore distributorship that also have connections  
08:57:41 5     historically to Groeneveld?

6     **A.**     The AMS is -- AMS is a former Groeneveld employee,  
7     Jerome DeWeaver, listed on the AMS website. There are  
8     other -- I'm not sure if they're employees or if they're  
9     independent sales reps, but on the website -- for instance,  
08:57:41 10     AMS has a person, Dave Fotica, in the sales department from  
11     Akron, Ohio. He was previously a Groeneveld Transport  
12     Efficiency employee, Butch Jennings from -- again the  
13     address in Akron, Ohio, previous Groeneveld employee. And I  
14     also believe that an administrative assistant that was a  
08:57:41 15     former Groeneveld employee works or has worked at AMS.

16     **Q.**     We've also -- there is also an additional  
17     distributorship identified on this website called All Points  
18     Lubrication, a gentleman Tim Anthony out of Texas. Can you  
19     tell the jury the connection there, please, as well?

08:57:41 20     **A.**     Yeah, Tim Anthony was a Groeneveld distributor  
21     operating out of the company called Groeneveld North Texas.

22     **Q.**     I'm going to show you now what we've marked as Exhibit  
23     PX-103. There are some additional distributors that  
24     Lubecore identifies on this list, and I'd like to take a  
08:57:41 25     look and go through it and see if you recognize any names or



Wilson - Direct

1 relationships with these people as well. We talked about  
2 Automated Solutions, Frank's Quality Service here in  
3 Lexington, South Carolina.

08:57:41

4 **A.** Yeah, that is -- that is -- the company goes by a  
5 different name. FQS is a Groeneveld distributor.

6 **Q.** Currently?

7 **A.** Currently, yes.

08:57:41

8 **Q.** We've talked about Fuel Systems already. Global Bound  
9 out of Indian Trail, North Carolina. Is that something you  
10 recognize?

11 **A.** I'm not familiar with that, no.

12 **Q.** And you said some of these companies go by different  
13 names. What -- it goes by a different name. Can you  
14 explain to the jury what you mean by this?

08:57:41

15 **A.** Well, I -- a company or a proprietor could have  
16 multiple business -- businesses, business names, different  
17 lines of business that they may choose to set up in  
18 different legal entities or doing business as names. So  
19 that's what I mean by it.

08:57:41

20 **Q.** Okay.

21 We're on this, Lubecore as Van Buren Arkansas. Does  
22 that have any familiarity to you?

23 **A.** Not to me, no.

08:58:16

24 **Q.** Lubecore Florida, we talked about Midwest Lube out of  
25 Elk Grove Village, Illinois. You guys have done business

Wilson - Direct

1 with anybody out of there?

2 **A.** It's familiar, but I can't put my finger on it. So I  
3 couldn't say with absolute certainty.

4 **Q.** Okay. Could you know possibly the names of the people  
08:58:16 5 affiliated with these companies as opposed to the business  
6 names themselves?

7 **A.** Absolutely.

8 **Q.** Okay.

9 Modern Corporation, Model City, New York, does that  
08:58:16 10 ring anything for you?

11 **A.** Similar to the last one, it is familiar, but I  
12 can't -- unless I know the underlying people, I couldn't  
13 tell you with certainty?

14 **Q.** Okay. For the next one we have here is North River  
08:58:16 15 Truck, and I also have some names of some people we were  
16 able to find on their website associated with that, Pamela  
17 Bruchie, John Lumby?

18 MR. ANASTOS: Objection, leading.

19 MS. MICHELSON: I'm just reading some names  
08:58:16 20 and asking if she --

21 THE COURT: Yeah, go ahead.

22 **Q.** A guy name Daniel Schmuck, and David -- David Schmuck.  
23 Any of this familiar in terms of relationship current or  
24 prior with Groeneveld?

08:58:22 25 **A.** Well currently, we have and have had for several years

Wilson - Direct

1 a relationship, distributorship with Groeneveld of Michigan,  
2 and that is operated and owned by the Schmuck family.

3 Q. Okay. Smithfield Diesel?

4 A. That's in Rhode Island, and I believe that because  
08:58:26 5 it's on the AMS website as well, the contact is Tony  
6 Fratinelli or Anthony Fratinelli, and he was previously a  
7 Groeneveld distributor as well.

8 Q. Until when about?

9 A. 2009.

08:58:26 10 Q. I'm going to -- we pulled up Midwest Lube. I'm just  
11 going to read you some names and see if you recognize any of  
12 these names. Doug Kolas, C-O-L-A-S or K-O-L-A-S, somebody  
13 named Kruppe or K-R-U-P-P-E. Does that -- is that familiar  
14 in terms of relationship with Groeneveld?

08:58:27 15 A. Not that I'm aware of.

16 Q. Okay.

17 A. No.

18 Q. And we talked about All Points Lubrication already,  
19 and then the last on this list is Germany Terry Dooley out  
08:58:30 20 of North Brook, Illinois. Is that somebody who has or had a  
21 business relationship with Groeneveld?

22 A. He was an employee several years ago.

23 Q. So if you could just tell the jury -- I mean off the  
24 top of your head, I know you can't keep everybody's name in  
08:58:30 25 your head, but who -- who -- who of these people or entities

Wilson - Direct

1 had ongoing business relationships with Groeneveld up  
2 through Lubecore's entry onto the scene? And my next  
3 question after that is going to be and who currently has  
4 ongoing business relationship with Groeneveld. So the first  
08:58:33 5 one is up through I guess 2009.

6 **A.** If I refer specifically to this list, we -- FQS.

7 **Q.** And that's Frank --

8 **A.** Still currently doing business with Fuel Systems,  
9 which we no longer do business with. Lubecore Florida is --  
08:58:36 10 we don't do any business with those owners or affiliates  
11 now.

12 Smithfield Diesel, up to around 2009. I -- perhaps a  
13 few small sales in 2010 but not very significant.

14 **Q.** Okay.

08:58:36 15 **A.** But, they were Groeneveld on record, Groeneveld  
16 Distributor.

17 All Points Lubrication, previously Groeneveld North  
18 Texas, up to 2009, but not since. So I'm not sure if I  
19 answered your question.

08:58:38 20 **Q.** I think you -- I was looking for exact, but I think  
21 you gave us a good idea. So thanks very much.

22 Of the businesses, distributorships on this list which  
23 is a summary prepared by a Lubecore International, Inc.  
24 regarding its 2010 USA actual sales in 2011, sales  
08:58:42 25 projections, what sales to people and businesses listed here

Wilson - Direct

1 would have gone through the Brunswick office if Groeneveld  
2 made those sales rather than Lubecore as opposed to one of  
3 the other Groeneveld offices?

4 MR. ANASTOS: Objection.

08:58:45 5 THE COURT: Overruled.

6 THE WITNESS: As I explained a little bit  
7 yesterday, we have a legal entity that operates out of  
8 Florida, Groeneveld Atlantic South, and one that operates  
9 out of the northwest called Groeneveld Pacific West, and  
08:59:05 10 they're responsible primarily for the Washington, Oregon,  
11 Utah area. Everywhere else in the U.S. goes through the  
12 corporate office located in Brunswick, Ohio. And that's  
13 through Groeneveld Transport Efficiency, Inc. So any sales  
14 other than in Florida and those north, west states and Utah  
08:59:37 15 would go through the books of Groeneveld in Ohio.

16 Q. Okay. Just so I'm clear, the only -- there's no Utah  
17 or --

18 A. There is Florida, Lubecore Florida. That would not go  
19 through Groeneveld Transport Efficiency books.

08:59:54 20 Q. So that the only one on this list, Exhibit 103 that  
21 would be going elsewhere rather than through Brunswick?

22 A. Yes, that's correct.

23 Q. Who -- are you familiar with the name John Tark?

24 A. Yes.

09:00:41 25 Q. Okay. And can you just tell the jury who he was,

Wilson - Direct

1 please?

2 **A.** John Tark was a Groeneveld Transport Efficiency  
3 employee in the capacity of branch manager of the office in  
4 Brunswick, Ohio.

09:01:02 5 **Q.** Do you recall approximately when the relationship  
6 between Lubecore Florida and Groeneveld was terminated? I  
7 mean if you don't, I'll have something that might refresh  
8 your memory, but I don't want to jump the gun there.

9 MS. MICHELSON: Your Honor, can I approach the  
09:01:45 10 witness and see if this refreshes her recollection?

11 THE COURT: Sure.

12 THE WITNESS: Thank you.

13 **Q.** Just read it and don't say anything about it, so.

14 **A.** Yeah, my hesitation was because I couldn't remember if  
09:02:11 15 it was in early 2010 but --

16 **Q.** Well, that's my question. This is my question.

17 **A.** December, 2009.

18 **Q.** Okay. My question is -- see we have to do these with  
19 technical evidentiary precision, precise wise.

09:02:25 20 Does the document I handed you refresh your  
21 recollection as to when the relationship between Groeneveld  
22 and Lubecore Florida terminated?

23 **A.** We didn't terminate anything with Lubecore Florida to  
24 be a little more precise.

09:02:45 25 **Q.** Okay.

Wilson - Direct

1       **A.**     We ended the relationship with Lou Boronco, who was an  
2     installing dealer in Florida for Groeneveld, December 1,  
3     2009.

4       **Q.**     And did Groeneveld do that in writing?

09:03:01 5       **A.**     Yes.

6       **Q.**     And can you just tell the jury what the reasons were  
7     for that, please, as they relate to the case here today?

8       **A.**     Well, it came to our attention that he was, in  
9     addition to doing Groeneveld installations, he was also  
09:03:35 10    doing work with for Lubecore.

11      **Q.**     I just need to run a few additional names by you to  
12     see if that rings any bell, and I'll just read them. And if  
13     it does, great.

14             All Points Lubrication, that's Scott Marcum's  
09:04:34 15     facility. That's not going to be on any list you have  
16     because I could not show this to you previously.

17      **A.**     Well, I believe All Points Lubrication is a Tim  
18     Anthony company in Texas.

19      **Q.**     I'm sorry. Okay.

09:05:27 20             Ms. Wilson, we did start yesterday talking about  
21     calculations that you made to figure out Groeneveld's loss  
22     here from the lost sales. So I'm kind of directing your  
23     attention back to that topic.

24             And I'd like to understand and have you explain to the  
09:05:45 25     jury how accountants and CFO's, such as yourself, determine

Wilson - Direct

1 that amount.

2 **A.** Well, the approach is to take -- apply a factor  
3 against the lost sales, the lost revenues, to determine what  
4 the contribution to profit would have otherwise been, and  
09:06:28 5 that approach, you have to take a look at, fixed versus  
6 variable costs because in other words, if you didn't have  
7 the sale, then you wouldn't have had the variable cost and,  
8 therefore, you want to make sure that you're applying the  
9 cost of that sale so that you get to a correct contribution.

09:06:54 10 So if you sold -- it if you lost \$1 in sale, it  
11 doesn't mean you'll get \$1 in profit. You have to deduct  
12 the variable costs that you incur to make that \$1 in sales,  
13 like materials and the cost if you pay your salesperson the  
14 Commission, those kinds of things.

09:07:16 15 **Q.** Yeah.

16 Can you just explain a little bit for us the  
17 difference between a fixed cost and a variable cost because  
18 I guess that has an impact on the amount and the  
19 calculation?

09:07:30 20 **A.** Well, a fixed cost, very typical example is, you know,  
21 you have a building, pay rent, that rent and obligation  
22 to -- for that building is there regardless of what your  
23 sales level is. So, you know, the monthly rent would be a  
24 fixed cost regardless of your sales level.

09:07:53 25 **Q.** And why do the variable costs get deducted from the



Wilson - Direct

1 gross revenues? I need to understand that better.

2 **A.** Okay.

3 Let's see if I can make it simple. It's because you  
4 have costs associated directly with those sales.

09:08:16 5 **Q.** With the additional products that you would have sold?

6 **A.** Yeah.

7 **Q.** But, for the loss? Okay. Go ahead.

8 **A.** So -- and very simple terms, as I mentioned, you know,  
9 to sell that product, you would be incurring costs of the  
09:08:33 10 materials, the transportation, the commissions, the -- all  
11 the extra costs associated with making that sell. You're  
12 not going to incur any extra rent costs on your building.  
13 So those are why those types of costs are excluded.

14 **Q.** And we actually have a little visual aid here if I can  
09:08:58 15 get this switched. So it sounds complicated, but I'd like  
16 you to take a look at this formula and ask you if this  
17 represents what you just described in terms of how you  
18 actually make the calculation, lost sales damages equals  
19 this contribution margin?

09:09:22 20 **A.** Right, yes.

21 So the only element that's sort of missing from here  
22 is the time, but you know, the -- in the simplest form, yes,  
23 to calculate a contribution margin percentage which can be  
24 applied to gross revenues, this is the basic calculation.

09:09:44 25 **Q.** Okay.

Wilson - Direct

1 And so just so we read this into the record, so the  
2 lost sales damages, that would be in dollar amounts?

3 **A.** Yes.

4 **Q.** And then --

09:09:58 5 **A.** Or it could be expressed as a percentage.

6 **Q.** And that's what the contribution margin is?

7 **A.** Yes. So gross revenues minus variable expenses equals  
8 the actual lost dollars, and that can be expressed as a  
9 percentage of the gross revenues. So in the example on  
09:10:23 10 here, this is just an example. If there was \$1 million of  
11 gross revenues and your contribution margin, I'm going to  
12 work it a little bit backwards, it might help to explain it,  
13 but on sales, after deducting your variable expenses, maybe  
14 your contribution margin in this example is 40 percent, that  
09:10:48 15 means that your variable expenses were 60 percent, which  
16 equal \$600,000. So in this example, \$1 million minus  
17 variable expenses of \$600,000 equals \$400,000. So  
18 contribution margin percentage of 40 percent.

19 **Q.** Ms. Wilson, to prepare for the case for the jury  
09:11:11 20 today, did you make calculations of Groeneveld's  
21 contribution margin during a time -- particular time period?

22 **A.** Yes, I did.

23 **Q.** Okay.

24 And where -- let's -- we'll just -- well, tell the  
09:11:29 25 jury what you did and then we'll use a piece of paper to

Wilson - Direct

1 help offer it.

2 **A.** You know, costs and structures and things change year  
3 over year. So you don't want to just take one year in  
4 particular. What I did was I looked at the most recent  
09:11:49 5 history, rather than going way back. So I looked at the  
6 2008, 2009, and 2010 profit and loss accounts of Groeneveld  
7 USA, and I calculated what the -- of the average of those  
8 three years of costs of materials, and the average variable  
9 costs, I analyzed each of my costs and determined in my  
09:12:26 10 opinion whether or not it was a variable or fixed cost, and  
11 if -- and I calculated out what the total contribution  
12 margin percentage would be for the lost sales. So there's a  
13 lot of numbers on this page coming up, but --

14 **Q.** And this page being Exhibit 135, and it's hard to get  
09:12:53 15 all of it on the screen. So if you need me to walk that up  
16 to you, I'm happy -- I'm happy to do that. I have an extra  
17 copy.

18 **A.** All right.

19 So this is a breakdown of some of the major costs in  
09:13:08 20 our profit and loss account for Groeneveld USA. And as I  
21 said, I looked at whether for purposes of this calculation,  
22 an item was a fixed cost or a variable cost, and so  
23 commissions over time, bonus payments, those vary, depending  
24 on what the sales level is. So I calculate -- I identified  
09:13:38 25 that as a variable cost.

Wilson - Direct

1 Q. Is that what this VC means?

2 A. Variable costs, yes.

3 Q. And does the FC, does that refer to fixed costs?

4 A. Fixed costs, yes.

09:13:50 5 Q. And so that's what this column is right here?

6 A. Yes.

7 Q. This second column. And I also see something, this  
8 says MC. Can you tell the jury what you mean by that?

9 A. A mixed cost is -- on this schedule, I identify  
09:14:06 10 traveling and representation, which is basically meals and  
11 entertainment, as a mixed cost item because there's -- it  
12 doesn't entirely vary with the sales of them, you know, when  
13 you have a sales force that are traveling out on the road  
14 and management people, you have sort of a constant level of  
09:14:37 15 traveling and entertainment costs, and some of it does vary  
16 but because some of it is a bit discretionary.

17 Q. And who prepared this document, this chart that's  
18 Exhibit 135?

19 A. I prepared it.

09:14:54 20 Q. And what is the source of the information that you  
21 used to prepare this information, this chart?

22 A. This was prepared from our accounting records.

23 Q. And are those historical accounting records, are  
24 they -- let me withdraw the question and ask it a different  
09:15:19 25 way.

Wilson - Direct

1           What kind of accounting records -- describe the  
2           accounting records for the jury so they get a sense of what  
3           the data was that you used to create this chart and then to  
4           do the calculation that you described?

09:15:33

5           **A.**     Okay.

09:15:56

6           Without going back to the -- in too much detail, we  
7           have what we call a ERP system. So that's basically a  
8           software where we can process our sales orders, purchase  
9           orders, our expenses and do all the recording of the  
10          transactions of the company inside this software package.

09:16:21

11          From there, we produce a set of financial statements,  
12          which includes a profit and loss account, which is  
13          extracting in total, not just a partial extraction, it is  
14          the sum total of all of the financial transactions that we  
15          recorded in the books, in each of those years.

16          **Q.**     And the -- and when is the data input into this  
17          accounting system that you described?

18          **A.**     Well, everyday as the transactions happen.

19          **Q.**     Okay.

09:16:36

20          And then the financial statements and the profit and  
21          loss statements that you described, when are those prepared?

22          **A.**     Well, we've -- we prepare our financial statements  
23          every month, and we have -- you know, business review units  
24          to review the results against our action plans. And then  
25          finally, at the end of the year, there's a final set of

09:16:57

Wilson - Direct

1 statements that are used also for tax purposes.

2 Q. Okay. And that is done --

3 A. Exactly the same database, the same financial  
4 statements.

09:17:09 5 Q. And so some of that is done daily. Some of it's  
6 monthly and some of that sounds annually for tax returns and  
7 that sort of thing?

8 A. Correct.

9 Q. So the 2008 data would have been completed in what  
09:17:25 10 year? It would have been input in full in what year?

11 A. Well, the transactions would have been all for the  
12 2008 up to December 31, 2008. But, then, you know, you do  
13 certain journal entries, and in the month of January to  
14 close out your books for approvals and other accounting  
09:17:48 15 estimates to make sure that they're in accordance with  
16 accounting standards.

17 Q. And do -- when does Groeneveld then close out its  
18 annual books? That's a good question.

19 A. It's the 12 months ending December 31st.

09:18:08 20 Q. And you picked three years. Why these three years,  
21 for what reason?

22 A. For me, I believe those are the most relevant years.  
23 To go back any earlier, I don't believe it's relevant. It  
24 would have been extra work for no relevant purpose.

09:18:35 25 Q. And when did you -- did you determine a contribution

Wilson - Direct

1 margin or the contribution percentage for each year?

2 **A.** No. As I mentioned, I average things together. So if  
3 you move the schedule over --

4 **Q.** Oh, I will.

09:18:51 5 **A.** -- so that I see the right-hand side. So I did a sum  
6 of those three years together to take a look at what the  
7 averages were, and I you used those costs elements that I  
8 identified as variable.

9 **Q.** I think if you point on that screen, if you touch it,  
09:19:12 10 it lights up. And instead of me trying to fumble around --  
11 there you go.

12 **A.** Okay.

13 **Q.** And I can clear it here. So that this way we can  
14 follow exactly which numbers and columns you're talking  
09:19:24 15 about. Continue, please.

16 **A.** So this column here is where I extracted from the  
17 previous columns, the averages of the variable costs. I  
18 believe I've taken a conservative approach. You'll notice  
19 that the one item that I said was a variable cost, which is  
09:19:52 20 our cost of sales. I have it at 52.5 percent. That's  
21 correct, although our actual financial statements that are  
22 variable costs were actually lower, but the reason why I  
23 overrode that number, and if you could move the schedule to  
24 the note section.

09:20:18 25 **Q.** I can.

Wilson - Direct

1       **A.**     Thank you. As I had mentioned yesterday, we have  
2       different product lines and different ways that we  
3       accumulate our sales information and so in the financial  
4       statements, that's the total of all of our types of sales,  
09:20:40 5       and so I did a different analysis looking at what the  
6       variable costs just for the EP-0 sales are, and it's -- it's  
7       a little bit higher as a percentage of our total revenue  
8       than some of the other product lines that we sell.

9             So if you could move back, please, to that far right  
09:21:07 10       column.

11       **Q.**     I sure can.

12       **A.**     Thank you.

13             So again, I didn't -- I tried to, based on my  
14       knowledge of the underlying data, make sure that I picked  
09:21:19 15       something that was conservative and, therefore, that's why I  
16       chose to put in the 52.5 percent, a higher cost base for the  
17       EP-0 products than what our total average is on the  
18       financial statements.

19             And then I went through and allocated some of the  
09:21:43 20       variable costs, the one and a half percent, the 1.4 percent,  
21       the travel, and is 2.8 percent. I'll talk about the special  
22       exception there. .4 percent for technical costs, and that  
23       totals up a total variable cost for our EP-0 sales of 58.7  
24       percent or almost 59 percent. So for every dollar we sell,  
09:22:18 25       59 percent is variable, extra costs we incur for that sale.



Wilson - Direct

1 Q. Why don't you talk a little bit now about this Note 2  
2 that you describe as attributable to the traveling and  
3 representation costs and how you categorized those.

4 A. In this cost bucket, accountants like to call them  
09:22:46 5 cost buckets, called traveling and representation, it  
6 includes all kinds of traveling expenses, whether it's an  
7 airfare, car allowance, car operating expenses, hotels,  
8 meals, entertainment, and with all of those elements in  
9 there, my estimate is that 70 percent of those costs are  
09:23:13 10 fixed. So if I was to look out at them over time, you know,  
11 they're very consistent costs, and 30 percent are variable.  
12 And so rather -- and that's why I said that this particular  
13 item was a mixed cost. And so the number got smaller all of  
14 a sudden here.

09:23:42 15 Q. Yeah, trying to get so the jury can see the whole  
16 thing.

17 A. If I added up all the traveling and entertainment  
18 costs in those three years, as a percentage of the total  
19 sales, it's 9.3 percent, and I took 30 percent of that to be  
09:23:59 20 variable, and again stated another way, we don't have the  
21 sale, then you don't have the variable costs. If you do  
22 have the sale, you incur an additional cost. So ultimately,  
23 I estimate that the -- for every dollar, our contribution  
24 margin is 41.3 percent, which is what's left over.

09:24:39 25 Q. Does the down turn in the economy affect the

Wilson - Direct

1 contribution margin calculation as you've described it?

2 **A.** Generally, I would say no, from an expense point of  
3 view. Again, it's a -- usually, if you are concerned about  
4 your cost levels, your -- what's going on in the  
09:25:15 5 marketplace, you tend -- you would be reducing fixed costs.  
6 That's why companies have layoffs, or, you know, maybe  
7 they'll dispose of certain assets or places. They'll  
8 eliminate their fixed costs. The variable costs are the  
9 things that happen when sales happen and don't happen.

09:25:39 10 So --

11 **Q.** So if -- so if sales go down on a particular year,  
12 then how does that affect the variable costs in that  
13 particular year?

14 **A.** It's -- again, generally does not affect your variable  
09:25:50 15 costs. The only exception I would say to that is --

16 **Q.** It doesn't affect your variable costs or your fixed  
17 costs?

18 **A.** Doesn't affect the variable cost percentage.

19 **Q.** Oh, okay. Thank you.

09:26:04 20 **A.** It doesn't affect my 41.3 percent or the contribution  
21 margin. The only exception I would say to that is if, in  
22 fact, you really wanted to aggressively price your product  
23 and try to sell more through selling it for, you know, a  
24 lower selling price, then, of course, your percentage of  
09:26:34 25 your material costs would go up. And so if you have again,

Wilson - Direct

1 trying to use some very simple math, if something costs you  
2 50 cents in materials to make and you sell it for a dollar,  
3 then your variable cost is 50 percent. If you sell that  
4 same item for 75 cents instead of a dollar, the material  
09:27:10 5 cost is still 50 cents, but as a percentage, this is where I  
6 have to get my calculator, all of a sudden, your variable  
7 costs go up to 67 percent. So you have to be a bit careful  
8 when you're talking about percentages.

9 **Q.** And were you careful when you put together these --  
09:27:37 10 this chart and these numbers to figure out and the average  
11 contribution margin and variable costs for Groeneveld in the  
12 last number of years?

13 **A.** Yes.

14 **Q.** Okay. And I mean -- you have an average on this chart  
09:27:53 15 of the 41.3 percent, but you actually could figure out the  
16 contribution margin in each year from the data in this  
17 document, Exhibit 135, correct?

18 **A.** I could, yes.

19 **Q.** And which -- so for 2008, as an example, what -- what  
09:28:17 20 would be -- what would be the gross revenues that would be  
21 in this first part of the formula that you'd stick in there?

22 **A.** \$8,921,231.

23 **Q.** And the variable costs, that would be, one, two,  
24 three, four, and then a -- that 30 percent, that's 70  
09:28:52 25 percent of this figure?

Wilson - Direct

1       **A.**     Correct.

2       **Q.**     And the total of that would be here?

3       **A.**     Correct.

4       **Q.**     Was there any --

09:29:02 5       **A.**     I do want to --

6       **Q.**     Sorry. Go ahead.

7       **A.**     I want to clarify one thing though because for  
8       purposes of this calculation, the lost sales, the sales that  
9       we lost through Lubecore is -- how can I say this? To me,  
09:29:38 10      those are incremental or in addition. Wouldn't have had --  
11      it wouldn't have had an impact in itself by itself on the  
12      fixed costs. The reason why I say that is the -- we  
13      wouldn't have hired extra accountants. We wouldn't have had  
14      a bigger building. We wouldn't have hired extra sales  
09:30:08 15      people for those sales that we had the capacity to make. So  
16      the reason why I bring that up is when you ask me about  
17      specifically 2008, and what that had to plug the numbers in,  
18      the -- let's see. How can I explain this? I think you have  
19      to look at things within a relevant range and a relevant  
09:30:45 20      time period. So to go through and calculate it out in 2008  
21      and 2009 and 2010, there is going to be some minor variation  
22      between those years.

23      **Q.**     Yes.

24      **A.**     But, for purposes of -- specifically of calculating  
09:31:04 25      the lost sales, the damages that we incurred, I looked at it

Wilson - Direct

1 on a three-year basis. So I'm not sure that it's relevant  
2 to go through each of these years and calculate it out that  
3 way.

09:31:22

4 **Q.** I understand and I guess my question is that you --  
5 you could do it annually to see if there was any kind of  
6 wide swing in any particular -- in any particular one of the  
7 three years that is way out of whack with the 41.3 percent  
8 that you come up with as the average contribution margin,  
9 correct?

09:31:43

10 **A.** Sure, yes.

11 **Q.** Okay.

12 And is any one of those years widely out of whack with  
13 that average contribution margin? If you need to go use  
14 your calculator and -- to answer that question, that's fine.

09:32:05

15 **A.** I didn't hear a question. Sorry.

16 **Q.** Is it -- is the contribution margin in any one year  
17 significantly different from the three-year average that you  
18 have here on this piece of paper, Exhibit 135?

09:32:28

19 **A.** It would be helpful if I could have the whole piece of  
20 paper in front of me. If that's possible.

21 **Q.** It is possible.

22 **A.** Thank you.

09:33:10

23 Well, if we want to go through these one by one, if it  
24 helps, I don't know if we -- I'll look at the variable costs  
25 for commissions, overtime bonus, the average is 1.5, and the

Wilson - Direct

1 range in 2009 was 14 up to 2008 of 1.7 -- a reason for that  
2 is not all sales have the same percentage of commission for  
3 instance. So that can really depend on what your sales mix  
4 is. The staff costs an average 1.4, a big range, .5 in 2009  
09:33:47 5 up to a high of 2.2 in 2010, and that staff cost include  
6 things like uniforms and temporary workers, that kind of  
7 thing. So it's a little bit discretionary or, you know, we  
8 have some influence of how much we would spend there. And  
9 that's why there's a range. Technical costs, fair -- very  
09:34:19 10 consistent. Those are the -- the costs, tools, and things  
11 that we use. Let's see.

12 **Q.** I'm sorry. I didn't know you still -- I was reading  
13 the document. Okay. I also see that your calculation of  
14 the contribution margin of the 41.3 percent, that that is  
09:35:00 15 for Groeneveld USA. Is there -- is there -- is that  
16 consistent across -- is that contribution margin consistent  
17 for the -- all the U.S. offices as opposed to the  
18 Plaintiff's offices, or can you just explain to the jury a  
19 little bit about that? Maybe I could ask my question a  
09:35:30 20 little better. Is there a significant difference between a  
21 contribution margin, specifically for the Brunswick office  
22 as opposed to the U.S. offices?

23 **A.** No significant difference. No significant  
24 differences.

09:35:51 25 **Q.** Okay. So to calculate -- and I want to understand

Wilson - Direct

1 this. So is contribution margin net profit or what -- what  
2 is -- what are you -- what are those lost sales damages?

3 MR. ANASTOS: Objection.

4 THE COURT: Overruled.

09:36:12 5 THE WITNESS: I kind of feel like you asked me  
6 two questions.

7 Q. I probably did, which shows my noviceness at the  
8 subject, but I want to understand what amount -- why these  
9 are lost sale damages, and if they include only net profit  
09:36:38 10 or if it's broader than that?

11 A. Well, this looked at our costs. There's no -- nothing  
12 in here which is kind of an opportunity costs. There are no  
13 other costs that have been added.

14 Q. Um-hum.

09:37:06 15 A. Or included in here to influence the percentage. So  
16 that --

17 Q. I think my question wasn't so good because you look a  
18 little confused. So let me think of how I can restate it.  
19 Okay?

09:37:29 20 After you have your gross revenues and after you take  
21 your variable costs out of it, and once you actually do the  
22 calculation of what the number amount is, is that number  
23 only net profit or is that money used to do other things?

24 A. Well, I think in this example, that was at the bottom  
09:38:00 25 of the page here, if -- if we lost -- if we did not get \$1

Wilson - Direct

1 million of sales, then we would have had \$400,000 less cash  
2 in the bank. I don't know if that helps to make it more  
3 clear.

4 **Q.** It does for me. Thank you.

09:38:20 5 So what -- so to determine and calculate Groeneveld's  
6 lost sales damages using this 41.3 percent contribution  
7 margin on the lost sales to Lubecore, what information do  
8 you need for each category here, the gross sales revenues.  
9 Let's start there. What number do you need to plug in to  
09:38:51 10 figure out Groeneveld's lost sales damages?

11 **A.** Well, I would use the Lubecore revenue as -- with the  
12 exception of anything that they had in Florida, Seattle,  
13 Oregon, Utah, which I believe on the list, we only  
14 identified Florida. So those sales would have otherwise  
09:39:17 15 been sales that went through Groeneveld Transport  
16 Efficiency, and times 41.3 percent would be our lost  
17 contribution margin in dollars, lost cash.

18 **Q.** And the money you would have put in Groeneveld's  
19 pocket but for the loss of those sales?

09:39:42 20 **A.** Correct.

21 **Q.** So let's -- you'll notice that we don't -- we don't  
22 have the 2009 information on the U.S. -- the U.S. Lubecore  
23 EP-0 sales on this document, Exhibit 103, but we -- I'd like  
24 you -- there's been testimony that there were 200 ALS EP-0  
09:40:17 25 systems that was sold in the U.S. by Lubecore. Can you



Wilson - Direct

1 determine what Groeneveld's lost sales damages are based on  
2 those 200 systems, those 200 sales?

3 MR. ANASTOS: Objection.

4 THE COURT: Overruled.

09:40:40 5 THE WITNESS: The sales going through a  
6 distributor, 200 units, the average selling price of those  
7 units would be approximately \$1500 per. So the total  
8 revenue of 200 times \$1500 each would be \$300,000 of revenue  
9 that we would have otherwise had, times the contribution  
09:41:13 10 margin of 41.3 is \$123,900.

11 Q. Now, let me ask you this. You just said if -- the  
12 \$1500 per unit price is what is approximately what  
13 Groeneveld earns when you sell the product to the  
14 distributor?

09:41:38 15 A. Yes.

16 Q. Is there a different selling price when Groeneveld  
17 sells it directly to an end user?

18 A. Yes, and I think the simplest way to explain that is  
19 the notion of a wholesale versus retail price. So, you  
09:41:59 20 know, if I'm going to -- the ultimate end customer is going  
21 to pay \$1, then if I'm selling that through a partner like a  
22 distributor, and he is then selling it on to the end user,  
23 then I'm going to sell it to the distributor for less and  
24 then the distributor sells it on to the end user. If I have  
09:42:25 25 a relationship with that end user directly, I'm going to

Wilson - Direct

1 charge him more, maybe \$1.25.

2 Q. And so what's the average selling price of a unit of  
3 an EP-0 single-line system to the end user?

09:42:49

4 A. I'm not sure if -- it can -- it can vary, depending on  
5 the application. So say it's roughly a 30 to 35 greasing  
6 point system sold for a tractor.

7 Q. Well, I'm going to -- and I'm going to not ask -- a  
8 tractor meaning a tractor like in a --

09:43:14

9 A. A truck. Would be, sorry, to the end user, roughly  
10 \$2500.

11 Q. Is it different for a trailer if you sell a  
12 single-line to put on a trailer, or do you charge different  
13 for the same system?

14 A. Yes. Again, it's about how that system is configured.

09:43:29

15 Q. Um-hum.

16 A. How many points, how many material -- like in addition  
17 to the pump, there are all the other things that carry the  
18 grease to the greasing point.

19 Q. Right.

09:43:41

20 A. So if there is, you know, fewer greasing points,  
21 there's less material to put the total system together. So  
22 naturally, it's going to be cheaper if it's fewer things to  
23 grease.

09:44:00

24 Q. So it's -- it's a bit cheap -- it's less expensive  
25 with the trailer than it is with the truck?

Wilson - Direct

1       **A.**     Yes.

2       **Q.**     The truck is about a 2500-unit and what's a trailer  
3       about?

4       **A.**     I can't give you, you know, a good example of that.  
09:44:17 5       There's such a wide variety of trailers.  So --

6       **Q.**     Is it less than 2000?

7       **A.**     Yes.

8       **Q.**     How much less?  What's a fair enough --

9       **A.**     It really -- because we have other products like the  
09:44:36 10       Compalube product I mentioned yesterday, that may be a more  
11       appropriate product.  We wouldn't necessarily put an EP-0  
12       pump on a trailer.  So I'm not sure that I'm making myself  
13       clear.

14       **Q.**     Oh, you are.  I think is your point basically that the  
09:44:57 15       sales price to the end user is going to be higher than the  
16       1500 per unit price you mentioned to the distributor?

17       **A.**     Yes.

18       **Q.**     Okay.

19               So moving now to 2010, we have Lubecore projections  
09:45:18 20       here of a total sale of the \$1,042 -- \$1,042,088.01.  Are  
21       you with me?

22       **A.**     Yes.

23       **Q.**     And now if we take out Lubecore Florida, \$657.67, what  
24       are we -- what are you left with?

09:45:54 25       **A.**     \$890,000 roughly.

Wilson - Direct

1 Q. \$890,000, an estimate. And so what -- what are  
2 Groeneveld's lost sales on that number, applying 41.3  
3 percent contribution margin?

4 A. \$367,000.

09:46:16 5 Q. \$367,000.

6 And now on this Lubecore document, we have 2011 sales  
7 of the \$2,084,176.01, and again, if we take out the Lubecore  
8 Florida, what are you left with there, approximately, as to  
9 gross sales?

09:46:45 10 A. \$1,779,000.

11 Q. \$1,779,000. And then you apply your contribution  
12 margin that you've described and you've got a loss in 2011  
13 of how much?

14 A. \$734,727.

09:47:08 15 Q. 727.

16 And why -- why are Lubecore's sales numbers, meaning  
17 their gross revenues attributable to those sales, the  
18 relevant number to figure out what Groeneveld's gross  
19 revenues on those sales would have been if Groeneveld was  
09:47:40 20 selling, if Groeneveld got the sale?

21 A. Pardon? I didn't hear the last part. I didn't hear  
22 your last comment.

23 Q. If Groeneveld got the sale instead of it going to  
24 Lubecore --

09:47:57 25 A. Okay.

Wilson - Direct

1 Q. Why -- why do you -- why do we plug in, why do you  
2 plug in Lubecore's gross revenues on those sales as part of  
3 the lost damages calculation?

4 A. Right.

09:48:10 5 MR. ANASTOS: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: Okay. So you know, there's a  
8 few things that I can comment on with that question. I'd  
9 like to start with generally, the price that we would charge  
09:48:31 10 to customers would be, you know, relatively similar to what  
11 I believe Lubecore would charge to customers. So it's  
12 not -- so I would use their number because they're selling  
13 prices to their distributors from what's very likely to be  
14 similar to what the market price is in the marketplace.  
09:49:00 15 That's -- so those numbers would be -- I forget about the  
16 number of units. The total revenues would be similar to  
17 those same customers. And those are -- so I'm not sure if  
18 that answers part of the question or --

19 Q. I think it does. I was seeing if you have more to  
09:49:25 20 add.

21 Now, we obviously don't have figures for 2012 and  
22 moving into the future on this chart. What period of time  
23 in the future is Groeneveld no longer going to be harmed,  
24 going to be damaged if Lubecore continues to sell its  
09:49:56 25 product? When does the market recover for Groeneveld?

Wilson - Direct

1 MR. ANASTOS: Objection.

2 THE COURT: Overruled.

3 BY MS. MICHELSON:

4 Q. You can answer.

09:50:08 5 A. What I can tell you as our own experience in -- when  
6 you hire a new distributor to sell your products, there is a  
7 learning curve for that distributor, Number 1. And then  
8 that distributor has to go out into their territory and make  
9 sales propositions to customers that -- to customers. And  
09:50:45 10 so when you appoint a new distributor, you know, they're  
11 going to start slowly and probably be fully sort of  
12 competent to work on their own in their exclusive territory,  
13 dealing directly with the end user customers, being totally  
14 comfortable with the Groeneveld selling proposition in  
09:51:13 15 approximately five years.

16 Q. And, Ms. Wilson, do you -- do you base that -- base  
17 that estimate on your experience in this industry?

18 A. Yes, it would only be this industry.

19 Q. Now, you were asked to gather up some -- Groeneveld's  
09:51:47 20 financial information to provide to an economist. Do you  
21 recall being asked to do that?

22 A. Yes.

23 Q. Okay.

24 And what kind of information did you gather to provide  
09:51:59 25 to the economist, John Burke?

Wilson - Direct

1       **A.**     I just provided all of the financial statement  
2       reports, financial reports for all of the U.S. entities for  
3       2005 onward. So including the Groeneveld Atlantic South,  
4       Groeneveld Pacific West, Groeneveld Transport Efficiency,  
09:52:33 5       total USA, everything that I have, I gave them included all  
6       kinds of details on expenses and sales.

7       **Q.**     Okay. And I'm just going to show you this and ask you  
8       to tell the jury -- we've marked this disk and it takes a  
9       while to focus this CD, Exhibit 125, PX-125. And can you  
09:53:06 10      just explain what's on here, and why it's in this format?

11      **A.**     Well, it's in this format because there is a lot of  
12      data, for all these years, all the legal entities. So  
13      it's -- Excel spread sheets and saved to the CD.

14      **Q.**     Okay. And that's what this Exhibit is, PX-125, all  
09:53:34 15      that data you just described?

16      **A.**     Yes.

17      **Q.**     Just give -- oh, you know, you said something. You  
18      said way back when, that your figures were conservative,  
19      that you were trying to be conservative in some way. Can  
09:53:48 20      you just explain how you were conservative and why you were  
21      being conservative?

22      **A.**     Well, as I mentioned before, maybe conservative in  
23      trying to be a bit precise and looking at to what I believe  
24      to be relevant, and that's why as an example, I didn't think  
09:54:20 25      it was -- although the average variable selling costs or

Wilson - Direct

1 cost of sales in 2008 through to 2010 was 49 percent, which  
2 was sort of right there, you know, I did look deeper into  
3 the details and I made sure that I -- you know was very  
4 specific about the EP-0 product group. That's what I mean  
09:54:54 5 by conservative. I think, you know, looking at a range of  
6 data, averaging it out instead of just sort of cherry  
7 picking what the best number is, I guess, and our variable  
8 costs, you know, were only a half percent in 2009 for staff  
9 costs and if I had to just pick that, this number would have  
09:55:29 10 been more favorable for me, but that's why I took the three  
11 years and I averaged it out. So that's what I mean by  
12 conservative.

13 **Q.** And I'd just like you finally to add up these three  
14 numbers for -- that you've calculated with us, while on the  
09:55:50 15 stand for the lost sales in 2009, 2010, and then 2011. I  
16 believe the number you came up with in 2009, based on those  
17 200 units, is the \$123,900?

18 **A.** Correct.

19 **Q.** And that's reflected on Exhibit 135 here, correct?

09:56:16 20 **A.** Yes.

21 **Q.** And then I was kind of taking notes on these things as  
22 we went along. On Exhibit 103, your calculations for 2010  
23 led to a \$367,000 loss to Groeneveld. And then finally, in  
24 2011, your number is \$734,727. And can you just tell the  
09:56:44 25 jury, please, what that total number is in terms of the lost



Wilson - Cross

1 sales damages to Groeneveld?

2 **A.** The contribution margin on the sales lost was over the  
3 three-year period is \$1,225,627.

4 **Q.** 627?

09:57:05

5 **A.** Correct.

6 MS. MICHELSON: I have no further questions of  
7 this witness. Thank you very much.

8 THE COURT: Thank you. You may cross-examine.

9 CROSS-EXAMINATION OF GAIL WILSON

09:57:23

10 BY MS. ZUJKOWSKI:

11 **Q.** Good morning, Ms. Wilson. I just want to start by  
12 quickly verifying a few matters with respect to Groeneveld's  
13 corporate structure here in North America. Several  
14 different entities have come up through the course of your  
15 testimony, and there really is only one Plaintiff here.

09:58:06

16 First, there's CPL Systems Canada, Groeneveld CPL  
17 which serves Canada, right?

18 **A.** Correct.

19 **Q.** And that's the entity for which you're the chief  
20 financial officer?

09:58:19

21 **A.** Yes.

22 **Q.** Okay. CPL sells Groeneveld products to three entities  
23 in the U.S.; is that correct?

24 **A.** Yes.

09:58:28

25 **Q.** Okay. One of them is the Plaintiff in this case,

Wilson - Cross

1 Groeneveld Transport Efficiency, right?

2 A. Yes.

3 Q. And then there's Groeneveld Pacific West?

4 A. Correct.

09:58:39 5 Q. And the third is Groeneveld Atlantic South?

6 A. Correct.

7 Q. Essentially all three of these subsidiaries do the  
8 same thing, except that Groeneveld Transport Efficiency is  
9 responsible for sales to fleets and national accounts; is  
09:58:51 10 that correct?

11 A. Yes.

12 Q. Okay. All right.

13 Let's take a look at Groeneveld's website. If you  
14 could pull that up, please, David.

09:59:10 15 And I think -- your Honor, is it -- there's been some  
16 testimony about the pump that's at issue in this lawsuit  
17 being Groeneveld flagship pump. I think you even referred  
18 to it as iconic yesterday.

19 There's been some suggestion that this pump somehow  
09:59:35 20 embodies Groeneveld's brand or image; is that correct?

21 A. Sorry. I didn't hear what you -- it somehow --

22 Q. Embodies Groeneveld's brand or image?

23 A. Yes.

24 Q. But, just to be clear, there's no picture of this pump  
09:59:49 25 on Groeneveld's current home page, is there, what you've got

Wilson - Cross

1 up here on the screen?

2 **A.** Yes, I'm just watching all the flashes. On the -- on  
3 one flash, there was -- you could tell there were pumps on  
4 the table or on the display, but a single shot on that home  
10:00:26 5 page, no.

6 **Q.** So there's a flashing display of photographs of  
7 products. And somewhere in there, there's at least some of  
8 your pumps?

9 **A.** Correct.

10:00:33 10 **Q.** Iconic flagship pump is not iconically displayed on  
11 the home page, though, is it?

12 **A.** Correct.

13 **Q.** David, if you could click on products and solutions,  
14 please, and then on automated greasing systems.

10:00:52 15 Even when you do that, go through Groeneveld's website  
16 to the page where its automated greasing systems are  
17 featured, we still don't see this so-called iconic or  
18 flagship pump particularly prominently displayed, do we?

19 **A.** Well, I believe it's that one right there.

10:01:09 20 **Q.** Sure, it's one of six pumps that are listed that  
21 Groeneveld carries, right?

22 **A.** Correct.

23 **Q.** And up at the top, actually the more prominently  
24 featured pumps are actually these square shaped -- are they  
10:01:24 25 TW-34 pumps? It's a different pump, though, that's

Wilson - Cross

1 displayed in a larger featured space on that page?

2 **A.** In the banner on that page, yes. It's different  
3 products shown, below which also comes up on the main page.  
4 I mean you didn't have to click anything extra. Our  
10:01:47 5 single-line pump, you know, was positioned first, in the  
6 lineup.

7 **Q.** The six pumps?

8 **A.** Pardon?

9 **Q.** Thank you. I see it there with the other six pumps,  
10:01:57 10 right?

11 **A.** Correct.

12 **Q.** There's been testimony from you and your colleagues  
13 that Groeneveld sold this EP-0 pump, has been trying to  
14 build an image around it for 30 years. I think Mr. Van der  
10:02:08 15 Hulst testified he was part of the team that engineered it  
16 in 1981 or at least the early 80's; is that correct?

17 **A.** Yes.

18 **Q.** That's not really, is it?

19 **A.** Not really what?

10:02:19 20 **Q.** Not really correct, is it? Do you recognize this  
21 version --

22 THE COURT: Excuse me.

23 **Q.** Do you recognize this version of the Groeneveld EP-0  
24 pump?

10:03:14 25 **A.** Pardon. Sorry?

Wilson - Cross

1 Q. Do you recognize this version of the Groeneveld EP-0  
2 pump?

3 A. Do I recognize it? I -- you know, I know that it was  
4 the Groeneveld pump. You're going to ask me what era or,  
10:03:34 5 you know, the dates, I'm not able to answer that.

6 Q. Well, isn't it true that this is the version of the  
7 pump that Groeneveld was actually selling in the 80's and  
8 even into the early 90's?

9 MS. MICHELSON: Objection.

10:03:46 10 THE COURT: Overruled.

11 THE WITNESS: I believe you'd have to ask one  
12 of the technical colleagues about that.

13 Q. You testified earlier about the employment history of  
14 Martin Vermeulen. You had records that showed that he came  
10:04:03 15 to Groeneveld in approximately November, precisely I guess  
16 November of 1986; is that correct?

17 A. Correct.

18 Q. Wasn't it actually Martin Vermeulen who engineered  
19 this new version at that time in the late 80's and van der  
10:04:21 20 Hulst who engineered this older version that Groeneveld was  
21 selling in the 80's and into the 90?

22 A. I believe you would have to pose that question to them  
23 specifically.

24 Q. Do you deny Martin Vermeulen was the head of research  
10:04:38 25 and development in the late 80's at Groeneveld?

Wilson - Cross

1       **A.**     Yes.

2       **Q.**     You checked his employment records, you had him, I  
3       think, in front of you the other day. What did they show  
4       you? What do they say his job title was?

10:04:50 5       **A.**     Pardon? The employment record?

6       **Q.**     Yeah. You referenced it yesterday. Isn't that what  
7       you consulted to read off his specific dates of employment?

8       **A.**     Yes.

9       **Q.**     Do you have that record? Does it happen to show a job  
10:05:12 10      title?

11      **A.**     I don't recall if that particular record had a job  
12      title or if it was just an employee listing.

13      **Q.**     Do you still have it?

14      **A.**     I do not have it with me here.

10:05:27 15      **Q.**     Okay. All right. Fair enough.

16             By the way, could we switch to the Elmo from the  
17      website link? Doesn't this version of Groeneveld's pump  
18      that was being sold throughout the 80's and into the early  
19      90's by Groeneveld look a whole lot more like the Bijur pump  
10:05:54 20      we've been looking at the last couple days?

21             MS. MICHELSON: Objection.

22             THE COURT: Overruled.

23             MS. MICHELSON: It's in the --

24             THE COURT: Overruled.

10:06:01 25             THE WITNESS: I mean I -- it's got a housing

Wilson - Cross

1 and has a reservoir, but you know, I can't tell from that  
2 picture about the, you know, the dimensions. If it's that  
3 big or that big. So I'm not quite sure, you know, what you  
4 want me to say. I don't think they're exactly the same, no.

10:06:21

5 Q. Certainly the pump you're looking at up there on the  
6 witness stand is more similar to the Bijur pump than the  
7 Groeneveld pump, the subject of this litigation?

8 A. I don't know what vintage that Bijur pump is and as I  
9 said, I'm not -- I wasn't familiar with what vintage this  
10 pump is.

10:06:39

11 Q. We can all draw our own inferences from the images, I  
12 guess.

13 I'm going to take a look now at PX-20 and I just want  
14 to be conscientious. I'm not sure that this has been waived  
15 or something. It was used yesterday, but it was marked  
16 highly confidential. I don't want to get in trouble for  
17 using it.

10:06:52

18 MS. MICHELSON: It's her document, so.

19 MS. ZUJKOWSKI: Okay, because of the presence.

10:07:01

20 MS. MICHELSON: We're using these documents in  
21 court. I guess we can talk about your concern.

22 MS. ZUJKOWSKI: I just wanted to make sure you  
23 wouldn't be mad before I put it up here, Debbie. Thank you.  
24 Appreciate that.

10:07:15

25 MS. MICHELSON: Did you say 20?

Wilson - Cross

1 MS. ZUJOWSKI: Yeah.

2 MS. MICHELSON: Thanks.

3 Q. This is a table of Groeneveld's advertising promotion  
4 trade show cost and you went through this briefly yesterday.  
10:07:35 5 I'll try to be quick with it.

6 Does this summary cost relate to all products that  
7 Groeneveld sells in North America or just EP-0 pumps at  
8 issue in this case?

9 A. No, it's all products.

10:07:49 10 Q. All of them?

11 A. Yes.

12 Q. Okay.

13 And in the top left-hand corner, we talked about this  
14 yesterday, but you're assuming that one Canadian dollar  
10:07:58 15 equals one U.S. dollar, right?

16 A. Correct.

17 Q. You acknowledged that yesterday, that the exchange  
18 rates fluctuated, but I think you said it was in a  
19 nonmaterial way. That's not really true either, is it?

10:08:47 20 This chart I'm showing you I pulled it off the  
21 Internet, just showing foreign currency compared to the  
22 Canadian dollars since 1948. And if I could draw your  
23 attention to the bottom left-hand corner. We're talking  
24 about the years that are in question here. It's really not  
10:09:10 25 that close one-to-one if you look at it. The numbers are



Wilson - Cross

1 kind of a bit off, aren't they?

2 **A.** Right. If you go back to the Exhibit, the -- this was  
3 really for illustrative purposes over time, what the total  
4 spending in North America was, if -- let me see if I have --  
10:09:49 5 I do have that schedule here, too, which would be easier to  
6 read. So the -- so where some of the costs were incurred in  
7 Canada, yes, a different exchange rate could be applied to  
8 come up with a total number so that the numbers aren't  
9 mixed. But, really, this is just -- to get a sense for the  
10:10:21 10 spending. So in the U.S., in Canada, there's significant  
11 spending over that period of time.

12 **Q.** Sure. Okay. I just wanted to make sure we were --  
13 knew the significance behind the numbers that we're looking  
14 at here. You know, you said there's significant spending,  
10:10:39 15 but again, you agree the numbers in this document reflect  
16 advertising promotion and trade show costs incurred by all  
17 three of the U.S. subsidiaries, right?

18 **A.** Correct.

19 **Q.** Not just the one that's the Plaintiff in this lawsuit?

10:10:52 20 **A.** Correct. This is to illustrate that we're serious  
21 about advertising in North America.

22 **Q.** Actually, none of these numbers relate directly just  
23 to Groeneveld Transport Efficiency, Inc.?

24 **A.** Well, the number is the total of U.S. spending, yes.  
10:11:11 25 That includes all of our locations and the total in Canada.

Wilson - Cross

1 So yes, you're correct. There's no specific line that shows  
2 just Groeneveld Transport Efficiency.

3 Q. Am I also correct to say that none of these costs are  
4 limited to the EP-0 pump that's at issue in this litigation?

10:11:31 5 A. Correct. As you've already asked, this is the total  
6 spending for all promotional advertising commercial costs,  
7 as we call it. So for all our product lines, for all of our  
8 U.S. locations.

9 Q. Thank you.

10:11:51 10 You acknowledge yesterday that Groeneveld cut  
11 promotional and advertising costs in 2009, right?

12 A. Correct.

13 Q. And that was because Groeneveld was basically watching  
14 costs like everyone else as a result of the economic turn  
10:12:04 15 down?

16 A. Correct.

17 Q. The drops weren't very small, though. They were -- in  
18 fact the exhibition costs fell almost 90 percent from 2008  
19 to 2009?

10:12:15 20 A. Correct.

21 Q. And is it your testimony that these drops in  
22 promotional costs had no impact whatsoever on Groeneveld's  
23 subsequent sales numbers that year or in the years that  
24 followed?

10:12:29 25 A. No. I don't believe I said that.

Wilson - Cross

1 Q. I think that's what you testified at the preliminary  
2 injunction hearing but -- so are you acknowledging today  
3 then that the Groeneveld decision to invest less money in  
4 advertising and promotional costs probably did have an  
10:12:48 5 impact on its sales numbers?

6 A. I mean there's always a possibility. It has an  
7 impact.

8 I believe at the preliminary injunction when I was  
9 asked was isn't that the reason why your sales were down in  
10:13:00 10 2009 specifically. And I don't think with a program which  
11 spans many years as worldwide as -- you know, where you can  
12 take some efforts and one particular year and specifically  
13 attribute it to another specific year, I think, you know, in  
14 cumulative effect, we've been predominant at trade shows  
10:13:26 15 over the years, and one -- you know, reduction in those  
16 shows in 2009 may not have a direct impact on the immediate  
17 sales thereafter.

18 Q. But, it very well may, and if not that year in 2010,  
19 in 2011, it's common sense that it -- it may?

10:13:52 20 A. Sure, I can agree with that. It may.

21 Q. Thank you very much.

22 Let's now look at PX-39. You agree with me the sales  
23 revenue figures in the column are sum again of all U.S.  
24 business not Groeneveld broken down between the three  
10:14:18 25 entities, not focused on the Plaintiff at issue in this

Wilson - Cross

1 litigation?

2 **A.** That's correct.

3 **Q.** And here again, sales decline from '07 to '08 by \$1  
4 million?

10:14:33 5 **A.** Yes.

6 **Q.** By about \$1.6 million from '08 to 2009?

7 **A.** Correct.

8 **Q.** And I think I've acknowledged these declines were  
9 really impacted or heavily influenced by economic conditions  
10:14:48 10 in the U.S. and specifically the transportation industry?

11 **A.** Yes.

12 **Q.** Okay. You certainly would have no way to really know  
13 or to suggest the way you've been doing in the last two days  
14 that Lubecore's presence in the market has any causal  
10:15:04 15 relationship with these sales declines, do you?

16 MS. MICHELSON: Objection.

17 THE COURT: Overruled.

18 THE WITNESS: Well, I certainly believe that  
19 when we had sales to Fuel Systems, as a distributor of  
10:15:21 20 Groeneveld products since 1985, and we no longer sell to  
21 them, then that is directly attributable to Lubecore.

22 **Q.** Let's talk about Fuel Systems specifically in a  
23 minute, but --

24 **A.** Um-hum.

10:15:34 25 **Q.** -- at the end of the day, in addition to the economy

Wilson - Cross

1 and your decreased advertising cost, several factors could  
2 have played a role in sales decreases, right? I think you  
3 even acknowledged that this morning. What about other  
4 competitors? Could some of these sales have gone to other  
10:15:53 5 competitors?

6 **A.** It is possible, but not likely.

7 **Q.** Do you even have any way to know whether Groeneveld  
8 was specifically competing for any of the customers that  
9 Lubecore sold its products to during these years? Were they  
10:16:17 10 out there, fighting for that sale?

11 **A.** Who was -- who's they?

12 **Q.** Your sales force, whether it be through your  
13 distributor --

14 **A.** Well, you do have to remember that our sales force in  
10:16:29 15 the territory of Wisconsin, for example, was Fuel Systems,  
16 you know. They represented us exclusively in their area,  
17 and so that -- that would be a totally different scenario  
18 than if we were going head to head with the end customer,  
19 with our direct sales force.

10:16:54 20 **Q.** Well, you got another distributor in Wisconsin pretty  
21 quickly, right? Mr. DeCleene is your distributor up there?

22 **A.** Um-hum, yes.

23 **Q.** And do you know with respect to every sale that every  
24 call that Fuel Systems is making on a customer that Mike  
10:17:08 25 DeCleene's right there next to him fighting for that sale?

Wilson - Cross

1 Do you even know if he's competing? I mean we've heard  
2 testimony that 5 to 10 percent of the trucking industry uses  
3 these products. How do you know he wasn't out there  
4 soliciting new customers that you guys weren't even  
10:17:22 5 competing for?

6 MS. MICHELSON: I'm going to object to the  
7 compound question.

8 THE COURT: Overruled, overruled. If she  
9 doesn't understand the question, she can say so.

10:17:30 10 MS. MICHELSON: I know it was a lot in there  
11 and lots of questions. That's my objection, but I  
12 understand.

13 THE COURT: Seems to be the rule of thumb for  
14 this trial, doesn't it?

10:17:39 15 (Laughter.)

16 THE WITNESS: Okay. So now with, you know,  
17 the recent discussion, I really lost track, so.

18 Q. That's all right. You placed -- unfortunately, it'll  
19 probably require a compound sentence to restate everything I  
10:17:53 20 just did, but you replaced Fuel Systems with Mike DeCleene,  
21 correct, as a distributor in Wisconsin, and that didn't take  
22 long, right?

23 A. Correct.

24 Q. And we know from prior testimony that not a whole lot  
10:18:08 25 of people in this industry even know about these products.

Wilson - Cross

1 So how do you know -- my question is how do you know that  
2 Mike DeCleene was out there making sales calls on every  
3 single one of Fuel Systems' customers trying to fight for  
4 those sales? You don't, do you?

10:18:28

5 **A.** I --

6 **Q.** Well, yes or no, is -- shouldn't be that complicated  
7 at the end of the day.

10:18:48

8 **A.** It is complicated because you added in a few ideas  
9 there and implying that DeCleene may or may not have been as  
10 actively promoting our product as Fuel Systems, and whether  
11 or not I know, you know, what his sales activities are  
12 versus Fuel Systems'. I can certainly tell that Fuel  
13 Systems, having been a distributor of Groeneveld products  
14 and sort of the very first representation of Groeneveld in  
15 the USA, with many, many years of experience, would be on a  
16 different plain -- level playing field than Mr. DeCleene  
17 that, you know, we have to, you know, train and start up,  
18 and assist, and help. So does -- do did he have the same  
19 sales capability, the same network of customers? I think  
20 that's unlikely.

10:19:40

21 **Q.** Thank you very much. That's -- that's exactly my  
22 point here. You really don't know that some of these other  
23 factors aren't the reason you lost these sales, the  
24 motivation of your own sales force, the skill of your own  
25 distributors and sales force, that could have played a role

10:19:54

Wilson - Cross

1 in whether or not you got these sales that you're saying you  
2 lost to Lubecore, right?

3 **A.** We're talking about a territory that was being  
4 represented by a skilled distributor on an exclusive basis.

10:20:17 5 THE COURT: Okay. Listen. We'll break now if  
6 that's okay with you.

7 MS. ZUJKOWSKI: Thank you.

8 THE COURT: All right, folks. We'll be in  
9 recess. I've got -- you can see the crowd gathering in the  
10:20:24 10 back. We've got a couple things to do, and so I will say  
11 we'll be in recess until 11:00. All right? And so you can  
12 refresh yourself, relax, and once I do a couple of our short  
13 hearings here, Shirle is entitled to a break, don't you  
14 think? That's Shirle. And so that's why we'll take a  
10:20:45 15 little bit of extra time. So keep in mind the admonition.  
16 See you about 11:00.

17 (Thereupon, a recess was taken.)

18 THE COURT: Now, when you're at work and the  
19 boss says you get a 15 or half hour break and you have one  
11:42:02 20 like this, you'd like that, wouldn't you?

21 (Laughter.)

22 THE COURT: All the lawyers and everybody has  
23 been here ready to go except for me. We had a criminal  
24 matter where the poor guy -- right, Shirle -- had the last  
11:42:13 25 time he was here, he had both of his girlfriends, and since



Wilson - Cross

1 the kids with each girlfriend, now one in the hospital  
2 having another baby and living with the other one, and he  
3 just can't go to jail because he's got too many  
4 responsibilities.

11:42:26 5 MS. MICHELSON: And your Honor, how many of  
6 his wives were here as well?

7 THE COURT: That's hard to say. A different  
8 world we live in today. And the next was a civil case, and  
9 I told the lawyers be like higher court; the Court of  
11:42:44 10 Appeals is 15 minutes a side to argue their motions. What  
11 time is it, quarter to 12:00?

12 (Laughter.)

13 THE COURT: You give a lawyer 15 minutes, what  
14 do they take? As much as they can, right? So I apologize  
11:42:56 15 for the delay, having you sitting around, but we'll go until  
16 12:30 and break for lunch if that's okay with everybody, and  
17 we'll work the schedule that way. Melissa, are you ready?  
18 No longer quizzical.

19 MS. ZUJKOWSKI: Thank you. I hope not.

11:43:13 20 THE COURT: She has been standing at the  
21 podium for ten minutes ready to go.

22 BY MS. ZUJKOWSKI:

23 Q. Gail, before we took the break, we were talking about  
24 Mike DeCleene up in Wisconsin, and I think we established  
11:43:25 25 pretty clearly that he took over from Fuel Systems as your

Wilson - Cross

1 distributor there as Groeneveld's distributor there. And I  
2 think you acknowledge he may not have had the same contact  
3 networks as Fuel Systems did, as Bill Koppelman did, right?

4 **A.** Correct.

11:43:41 5 **Q.** Okay.

6 He may have, though, for all we know. I mean he was  
7 -- it's true he was actually a partner with Fuel Systems and  
8 involved in a partnership through which he did actually  
9 distribute Groeneveld's products prior to becoming its  
10 exclusive distributor in Wisconsin, though, right?

11 **A.** The extent of their relationship, I'm not sure. Fuel  
12 Systems did use or partnered with DeCleene. I'm not sure of  
13 the period of time, and I'm not sure of the extent.

14 **Q.** Okay.

11:44:15 15 You know, he had some experience and that there was a  
16 relationship there and enough to know that he probably  
17 didn't have as much of a learning curve getting up to speed  
18 as distributor as someone starting from scratch would have,  
19 right?

11:44:27 20 **A.** Right. But, he also had the challenges of, you know,  
21 customers that are confused about who's selling what, and,  
22 you know, so there are additional challenges for a new  
23 distributor.

24 **Q.** Okay.

11:44:49 25 We'll talk about that in a second, but just to

Wilson - Cross

1 continue covering some of these other factors that may have  
2 played a role in Groeneveld's sales decline, what about  
3 price, product pricing? Would that have played a role in  
4 your competing for some of these customers against Lubecore  
11:44:58 5 and others? All I'm asking is whether it could have, you  
6 know, whether as he --

7 **A.** There's always, you know, marketing 101, a long list  
8 of things that can influence the sales levels.

9 **Q.** Sure.

11:45:20 10 Somebody could have had a poor experience with  
11 Groeneveld or with a servicer or with an installer  
12 potentially, right?

13 **A.** Absolutely.

14 **Q.** There could have been a change in demand. I  
11:45:33 15 understand that there was apparently change in the  
16 Government's regulations with respect to something called  
17 dis-brakes, which apparently means that there's less  
18 greasing points on new trucks that need to be serviced.  
19 Have you heard about this?

11:45:46 20 **A.** Yes, there's -- in the regular marketplace, there's  
21 technological factors that influence it as well, yes.

22 **Q.** So change in demand for these products altogether?

23 **A.** Pardon?

24 **Q.** Change potentially at least demand for the proceeds  
11:46:01 25 altogether?

Wilson - Cross

1       **A.**     Not sure I like that choice altogether, but again,  
2       there will be a long list of influences on sales volumes.

3       **Q.**     Okay.

4               With all of that in mind, to even suggest that the  
11:46:17 5       sales decline or any portion of it is attributable to  
6       competition from Lubecore as a new market is pretty  
7       speculative, isn't it?

8       **A.**     Not in my opinion.

9       **Q.**     Even a step more speculative to determine a sale was  
11:46:35 10      lost due to a confused customer; isn't that true?

11      **A.**     Are you asking me if that's what I said? It's not  
12      what I said.

13      **Q.**     Well, a couple minutes ago. You said Mike DeCleene  
14      had to worry about potentially confused customers up in  
11:46:55 15      Wisconsin, and your case is about whether or not customers  
16      in this industry are confused about the source of these two  
17      products. So to show some sort of causation here, we need  
18      to talk about whether or not a confused customer buying  
19      Lubecore's pump instead of the Groeneveld pump is actually  
11:47:13 20      the reason why Groeneveld lost the sale. Do you now  
21      understand the context in which I'm going to ask you a  
22      couple other questions on that point?

23      **A.**     Yes, I understand the context.

24      **Q.**     Okay. So you don't know the specific circumstances of  
11:47:26 25      any sale made by Lubecore to one of its customers? You

Wilson - Cross

1 don't know the sophistication of the customer that Lubecore  
2 is dealing with, do you?

3 MS. MICHELSON: Objection, compound question.

4 THE COURT: Overruled.

11:47:40 5 THE WITNESS: You know, I think when perhaps  
6 you may have had an opportunity to ask my colleague,  
7 Mr. Kees Wapenaar those specific questions.

8 Q. Just asking if you know right now, do you know the  
9 answer to the -- you know, if you don't know, that's okay.

11:47:58 10 A. But, you asked a general question. I'm sorry, not  
11 trying to be difficult. I --

12 Q. Do you know the specific sophistication level of  
13 any of the end user customers that are buying Lubecore  
14 products from its distributors, the ones that are basically  
11:48:16 15 forming these numbers, we're going to talk about in a little  
16 bit that you're basing your so-called damages analysis on?

17 A. The sophistication of the Lubecore customers or the  
18 sophistication of customers that buy automatic greasing  
19 systems? I know that, you know, there's a thoughtfulness by  
11:48:39 20 the purchaser of a greasing system, but I, you know,  
21 specifically about the Lubecore customers, no.

22 Q. So thoughtfulness, actually that suggests to you,  
23 doesn't it, that these people are not likely to be confused  
24 by the source of the product that they're buying; they're  
11:49:00 25 not walking into a store and picking something off the shelf

Wilson - Cross

1 that's sitting next to something else on the shelf the way  
2 they would at a drugstore, are they?

3 MS. MICHELSON: That's objectionable and  
4 misleading.

11:49:09 5 THE COURT: Overruled. I don't need a speech  
6 after the objection.

7 THE WITNESS: The decision that a purchaser of  
8 a large piece of equipment like a tractor trailer is not  
9 taken lightly. I'm sure. But, I just -- I can't even  
11:49:32 10 understand -- I can't relate to your analogy of picking two  
11 things off of a shelf. There's -- the fact that they  
12 understand the concept of automatic lubrication system and  
13 will -- they appreciate or understand how that will help  
14 their maintenance costs is what I was referring to about  
11:50:01 15 thoughtfulness.

16 So the fact we've had relationships and a product and  
17 image and leadership in the marketplace, they may very well  
18 have been confused that seeing the Lubecore pump was being  
19 distributed by the same people that had previously  
11:50:29 20 distributed the Groeneveld product.

21 **Q.** But, you don't know that they were confused, do you?  
22 You don't have any evidence of any customer being actually  
23 confused about the source of these products?

24 **A.** Well, I did not testify about that confusion, but I  
11:50:42 25 believe there were other witnesses that would have.

Wilson - Cross

1 Q. I'm not sure that there were actually. And does it  
2 even make sense to you that someone who is as thoughtful as  
3 you describe them doesn't understand the distributor who  
4 they're dealing with or the manual that they're being given  
11:51:02 5 is identifying the source of the product that they're  
6 buying?

7 A. Well, the manual that's given is probably done by  
8 the -- looked at by the technician or mechanics, which they  
9 may very well be different than the purchaser, than the  
11:51:20 10 engineer. So I -- you know.

11 Q. What about a sales brochure that says Lubecore on it?  
12 You think these thoughtful people are not smart enough to  
13 know that a guy who says I'm the Lubecore distributor,  
14 who's handing them a brochure that says Lubecore and selling  
11:51:35 15 a pump with Lubecore on it is selling a Lubecore product?  
16 Are you seriously suggesting that?

17 A. Well, I'm serious about everything that I do, yes.

18 Q. Fair enough. I'd like to -- I'm going to move on here  
19 and I don't mean to cut you off.

11:51:49 20 MS. MICHELSON: Can she answer the question?

21 THE COURT: She did answer the question.

22 BY MS. ZUJKOWSKI:

23 Q. You don't even know if a customer who's buying a  
24 Lubecore product is switching over from a different  
11:52:01 25 competitor like Grease Jockey or Lincoln or one of the other

Wilson - Cross

1 competitors that we've talked about, do you?

2 **A.** Yeah, fair enough. They might have been switching to  
3 Lubecore thinking it was Groeneveld. I -- you know, I don't  
4 know.

11:52:15 5 **Q.** They might have been. We just don't know. It's -- we  
6 just don't know, right?

7 **A.** Right.

8 **Q.** All of this is speculative; isn't that right?

9 **A.** No, I don't -- I do not believe it's speculative.

11:52:27 10 **Q.** Okay. Let's move on. Let's talk about the former  
11 Groeneveld employees and distributors that you've testified  
12 about. There's been a lot of talk about Fuel Systems and  
13 everyone I think is aware by now Fuel Systems is a former  
14 Groeneveld distributor, now they're a Lubecore distributor,  
11:52:43 15 right?

16 **A.** Correct.

17 **Q.** Do you know which party terminated the relationship  
18 between Fuel Systems and Groeneveld?

19 **A.** At the end of the day legally, I am not sure who  
11:52:58 20 terminated whom. It was a parting of the ways.

21 **Q.** Let's talk about it a little more. You mentioned they  
22 were your exclusively distributor in Wisconsin, but that's  
23 not really true. Did Fuel Systems ever have a written  
24 exclusive distributorship contract with Groeneveld?

11:53:20 25 **A.** Did they ever have a written contract? No. Do they



Wilson - Cross

1 have a verbal contract? Yes, since 1985, I believe.

2 Q. Do you know if it's even enforceable to have a verbal  
3 exclusive distributorship contract dating back to 1985? Is  
4 there even such a thing?

11:53:39 5 A. I'm sorry. I'm not a lawyer. So I couldn't comment  
6 on that, but --

7 Q. There wasn't a written contract, though, right? You  
8 know that, don't you?

9 A. I know that, but there was many years of history and  
11:53:52 10 ways of doing business and understandings and agreements.

11 Q. Did there come a time when Fuel Systems became unhappy  
12 with the speed at which it was getting its parts and  
13 supplies from Groeneveld?

14 A. They did claim in a nonspecific way that they were  
11:54:11 15 disappointed with the supply of delivery of parts from  
16 Groeneveld.

17 Q. Thank you. And then at some point, Groeneveld  
18 actually did ask Fuel Systems to sign over a written  
19 exclusive distributorship contract, didn't they?

11:54:25 20 A. Yes.

21 Q. They refused, didn't they?

22 A. Yes.

23 Q. And that's when Groeneveld terminated Fuel Systems as  
24 a distributor, right?

11:54:32 25 A. Well, I would say they didn't refuse. In fact, they

Wilson - Cross

1 said sure. We're open to, you know, looking at an  
2 agreement, send us a draft, and we'll get back to you, and  
3 we'll have our lawyers look at it and give you feedback.  
4 And this was the nature of the discussion about okay, yes,  
11:54:53 5 ,maybe we should put something in writing, and then that  
6 disappeared, so.

7 **Q.** Why would Fuel Systems need to look at a draft about  
8 it or have their lawyers consider it if they were already  
9 bound by some sort of exclusive distributorship agreement  
11:55:09 10 orally?

11 **A.** Perhaps we wanted to make some changes or clarify each  
12 party's roles and responsibilities because it had been a  
13 good many years that we'd been doing business together.

14 **Q.** Groeneveld has not sued Fuel Systems, have they?

11:55:31 15 **A.** No.

16 **Q.** And that's because Fuel Systems did not breach any  
17 agreement with Groeneveld, did they?

18 MS. MICHELSON: Objection.

19 THE COURT: Overruled.

11:55:39 20 MS. MICHELSON: Legal conclusion.

21 THE COURT: Overruled.

22 THE WITNESS: You know, we -- just -- we're in  
23 the business for trying to sort things out, and we had a  
24 long standing relationship with Fuel Systems, and I really  
11:55:58 25 don't -- I don't know really the extent that we may have had

Wilson - Cross

1 legal recourse, but for certain, it was not the route we  
2 wanted to go.

3 Q. We also talked about a distributor called All Points  
4 in Texas and until this past, I guess it was a year ago last  
11:56:17 5 summer, it was a distributor of Groeneveld products under  
6 the name of Groeneveld North Texas, right?

7 A. Correct.

8 Q. Okay.

9 Would you agree Groeneveld terminated that distributor  
11:56:30 10 in 2010 due to poor sales performance?

11 A. Yes, that's correct.

12 Q. So they didn't leave voluntarily, you terminated them?  
13 What about the distributor AMS here in Ohio, who is a former  
14 employer of Groeneveld? That's Jerry DeWeaver, right?

11:56:51 15 A. Jerome DeWeaver.

16 Q. And he left Groeneveld around 2008, right?

17 A. Correct.

18 Q. Mr. DeWeaver, he's legally blind, isn't he?

19 A. I believe so, yes.

11:57:04 20 Q. And isn't it true he's got a claim pending against  
21 Groeneveld relating to failure to accommodate that  
22 disability?

23 MS. MICHELSON: I'm going to object.

24 THE COURT: The objection is sustained.

11:57:15 25 Q. What about any of Mr. DeWeaver's other employees? I

Wilson - Cross

1 think Debbie ran a few names by you. Any of them get fired  
2 by Groeneveld?

3 **A.** Did any of them -- pardon?

11:57:28

4 **Q.** Mr. DeWeaver's lower level employees that you  
5 mentioned a few during?

6 **A.** Yeah, I didn't hear what the question was.

7 **Q.** Were any of them fired by Groeneveld?

11:57:46

8 **A.** There was terminations of all of those people. I am  
9 not at all suggesting that these were people that were under  
10 our employ, and then went to Lubecore. They were  
11 terminated, and yes, I've never suggested otherwise.

12 **Q.** Thank you. Every single one of them had a right to go  
13 get another job, seek out another opportunity?

14 **A.** Absolutely, absolutely. No problem with that.

11:58:02

15 **Q.** Thank you. Lubecore's distributor in Florida consists  
16 of one former Groeneveld employee, Chad Cole, right?

17 **A.** Correct.

18 **Q.** And a former installing dealer, Louis Boronco, right?

19 **A.** Correct.

11:58:13

20 **Q.** The former employee was Chad?

21 **A.** Chad Cole, yes.

22 **Q.** And his relationship with Groeneveld ended in 2009  
23 because he was also terminated, right?

24 **A.** Yes, through our downsizing.

11:58:26

25 **Q.** Okay. The installer, Lou Boronco, I think he left on

Wilson - Cross

1 his own, but he wasn't getting paid on his invoice; is that  
2 right?

3 **A.** Absolutely incorrect.

4 **Q.** Okay. So if he said so, he'd be lying?

11:58:40 5 **A.** I don't -- that's pretty strong words. So I don't --  
6 I don't believe that there's any dispute about invoice  
7 payments.

8 **Q.** Was there at any time?

9 **A.** Was there at any time?

11:58:59 10 **Q.** Right. Did Mr. Boronco ever complain his invoices  
11 were getting paid too slow?

12 **A.** He had complained about that, yes.

13 **Q.** Okay. Thank you.

14 **A.** I will add, though, that you know in the grand scheme  
11:59:12 15 of things, this wasn't a constant discussion between Boronco  
16 and ourselves. He submits invoices quite late and expects  
17 immediate payment, even though it was for work or services  
18 rendered previously. So, you know, there's always -- it was  
19 not about an intentional withholding or late payment.

11:59:36 20 **Q.** In any case, he was dissatisfied with the relationship  
21 and he had a right to leave and get a new job, and that's  
22 what he did, right?

23 MS. MICHELSON: Objection, speculation.

24 THE COURT: Overruled. And I don't need a  
11:59:47 25 reason for the objection.

Wilson - Cross

1 MS. MICHELSON: Oh, I'm sorry, your Honor.

2 MS. ZUJKOWSKI: Correct.

3 THE WITNESS: I believe we've already looked  
4 at one of the documents.

11:59:55 5 BY MS. ZUJKOWSKI:

6 Q. Where a Groeneveld Transport Efficiency terminated the  
7 relationship with Mr. Boronco? Thank you.

8 All these people we just talked about -- Mr. Cole,  
9 Mr. DeWeaver, Mr. Koppelman, Fuel Systems, Inc. -- in case,  
12:00:13 10 anyone doesn't remember, Mr. Boronco, all of these people  
11 appear to be affiliated with the autolubeparts.com website  
12 which we've talked about a fair amount during your  
13 testimony, right? Their distributors? And you knew about  
14 the auto lube parts website that those distributors set up  
12:00:34 15 last fall when you testified at the PI hearing, didn't you?

16 A. Sorry. Didn't -- I know about those distributors were  
17 set up last fall?

18 Q. Yeah.

19 A. Is that the question?

12:00:45 20 Q. Autolubeparts.com they had set up that website?

21 A. Correct.

22 Q. And that same website was looked at as an exhibit  
23 during the preliminary injunction hearing, right?

24 A. Correct.

12:00:54 25 Q. Groeneveld send any kind of cease and desist letters

Wilson - Cross

1 asking them to shut it down since then?

2 **A.** No, we haven't.

3 **Q.** Sued any distributors in connection in connection with  
4 their website discussion?

12:01:07 5 **A.** No, we haven't.

6 **Q.** What about Fuel Systems in connection with its  
7 website; sued them? We looked at that earlier yesterday.

8 **A.** No, we haven't.

9 **Q.** I'm sorry.

12:01:22 10 It didn't sue them because these people aren't doing  
11 anything illegal, are they?

12 MS. MICHELSON: I'm going to object.

13 THE COURT: Overruled.

14 THE WITNESS: Illegal? I don't know. Part of

12:01:41 15 our discussion and our strategy, we weren't talking about  
16 the legalities of what they were or were not doing. It's  
17 just the presentation of what they're representing, just  
18 doesn't -- is not correct.

19 **Q.** Do you have any actual knowledge that Lubecore itself  
12:02:05 20 owns or operates or controls that website in any way?

21 **A.** The AMS website?

22 **Q.** Yes, whether Lubecore controls the website, that's  
23 called AMS, Autolube Parts' website, yes?

24 **A.** I mean I have no -- I do not know that Lubecore has  
12:02:27 25 any direct control or authorship of that website.

Wilson - Cross

1 Q. Does Groeneveld have control or authorship over its  
2 independent distributors' web sites?

3 A. No, I think the company website is the company's  
4 website.

12:02:53 5 Q. Thank you. So Groeneveld fires or creates a poor  
6 working environment for these people and then tries to imply  
7 here today that there's something wrong with them finding  
8 new opportunities in the field that they know in setting up  
9 a website to sell their products?

12:03:08 10 A. A poor working environment? I really am confused by  
11 what you're wanting me to agree with. There's some pretty  
12 strong words in there.

13 Q. I apologize. I'll withdraw the question.

14 Let's move on. I want to take a quick look at the  
12:03:25 15 search page that was introduced yesterday.

16 You had conducted, I think you testified, a Google  
17 search with the term Groeneveld Grease System and  
18 autolubeparts.com comes up as one of the hits, right?

19 A. Correct.

12:03:43 20 MS. ZUJKOWSKI: Can we switch to the Elmo?

21 Q. Why does that say debbiemichelson@miller.com at the  
22 top of this page after you conduct this search?

23 A. So the document that was submitted was printed from  
24 Debbie Michelson's computer.

12:04:09 25 Q. Okay. So you did conduct this search yourself; is



Wilson - Cross

1 that your testimony?

2 **A.** I also conducted the search, yes.

3 **Q.** Okay. So she just recreated it to make the exhibit  
4 then?

12:04:19 5 **A.** Well, are you asking me who conducted it first or  
6 second? I -- you know --

7 **Q.** I'm just asking whether or not the exhibit was  
8 conducted by you as I thought you had testified yesterday  
9 came as a result of a search you conducted?

12:04:38 10 **A.** Well, I conducted the search. Did I print this piece  
11 of paper? No.

12 **Q.** Thank you very much. Let's turn to Page 2 of this  
13 exhibit. See this over here in the right, where it says  
14 sponsored links?

12:04:54 15 **A.** Correct, yes.

16 **Q.** Autolube Parts website is not off to the right under a  
17 sponsored link column, it's in the middle where the organic  
18 search results come up, isn't it?

19 **A.** Sorry. You said it was in the middle?

12:05:14 20 **Q.** I change. I apologize. Maybe I'm going too quick.  
21 Let's stick here for a second. In the right hand column of  
22 the page, which prints the Google search, you see a couple  
23 of sponsored links on the right, do you see that to the  
24 right?

12:05:27 25 **A.** Yes, yes.

Wilson - Cross

1 Q. Okay. Doesn't that mean that the site owner of the  
2 sites under the sponsored links paid some sort of money to  
3 Google to try to get their name to come up? Is that your  
4 interpretation of what a sponsor link is?

12:05:40

5 A. Yes.

12:05:55

6 Q. Okay. So when your result comes up, in the  
7 nonsponsored links catalog, I'm using the word organic  
8 search to describe how that comes up, and I just wanted to  
9 confirm with you, doesn't that mean to you that the site  
10 owner doesn't do anything special to get their hit to come  
11 up?

12 MS. MICHELSON: Objection.

13 THE COURT: Overruled.

12:06:07

14 THE WITNESS: I am not an expert in how you  
15 tag or design your website pages to move them up and down  
16 the regular organic database searches.

17 Q. You certainly aren't trying to suggest that Autolube  
18 Parts somehow controls Google search algorithm, are you?

12:06:39

19 A. As I said, I am not technically knowledgeable enough  
20 to know how a company directly influences that. And so all  
21 I'm presenting is the fact that when I call it up automatic,  
22 the AMS website comes up, also because of the use of the  
23 word Groeneveld in their text.

24 Q. All right. Thanks.

12:07:05

25 Lubecore, if you accept as your testimony about

Wilson - Cross

1 Lubecore doesn't have any control whatsoever over this  
2 website, you certainly wouldn't expect them to have anything  
3 to do with how they come up in response to a Google search,  
4 would you?

12:07:20 5 MS. MICHELSON: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: Yeah, I don't think to me this  
8 is about necessarily who did, why they did it, how it comes  
9 up. It's again just showing that there is confusion about  
10 some of the companies out there that have Groeneveld's name  
11 and association with Lubecore's name.

12 Q. Once you start looking at the website itself, even if  
13 you do plug in the name Groeneveld, the name of an ALS pump,  
14 pops up some ALS pumps. They're all with clearly labeled  
12:08:04 15 Lubecore pumps on the website, aren't they?

16 A. Yes.

17 Q. The pictures don't say Groeneveld?

18 A. Yes, correct.

19 Q. Why would Autolube Parts show pictures of Groeneveld  
12:08:13 20 Lubecore's pump if they were trying to confuse anyone into  
21 thinking it was a Groeneveld product?

22 A. You'll have to ask Mr. DeWeaver what his intention  
23 was, but the --

24 Q. Does it make sense to you that's something someone  
12:08:40 25 would do to try to cause confusion, put a picture of a

Wilson - Cross

1 labeled pump on the website?

2 **A.** Well, if they didn't want to cause confusion, they  
3 didn't have to have the pump looking exactly like ours,  
4 combined with all the other things, that means that perhaps  
12:08:59 5 they're banking on the reputation of Groeneveld's market  
6 presence to date.

7 **Q.** Well, let's talk about trying to bank on someone  
8 else's reputation for a second actually. Are you aware that  
9 Groeneveld recently registered the trade name Lubecore in  
12:09:14 10 three European companies?

11 **A.** No, I was not.

12 **Q.** Take a look at another exhibit.

13 MS. MICHELSON: Do I get a copy of this? Can  
14 I have a copy?

12:09:29 15 MS. ZUJKOWSKI: Sure. I'll bring one up to  
16 you.

17 MS. MICHELSON: Thanks so much.

18 MS. ZUJKOWSKI: I guess we'll be marking this  
19 TXZ.

12:09:57 20 **Q.** Does this refresh your recollection at all as to  
21 whether or not Groeneveld gone out there recently and tried  
22 to register Lube core's company name as a trade name?

23 MS. MICHELSON: Objection.

24 THE COURT: Overruled.

12:10:10 25 THE WITNESS: Doesn't refresh my recollection

Wilson - Cross

1 because I was not aware of this. This is not something that  
2 came from my office, any office in North America. It's  
3 clearly in a different language. So I was not aware of  
4 this.

12:10:24 5 Q. Thanks. We'll talk to another witness who can  
6 interpret it, I think later then. But, is that really fair?  
7 If Groeneveld's registering Lubecore's trade name, is that a  
8 fair way for them to compete?

9 A. A fair way of who, Groeneveld to compete?

12:10:45 10 Q. Right, to try to race to the Register's Office in  
11 every country in the world and claim a company name as its  
12 trade name?

13 A. I am not aware of what the purpose is, the reason for  
14 this. So I can't comment on -- about what you say is fair.

12:11:02 15 Q. Do you know if there's any other countries -- by the  
16 way, I think it's Belgium Luxenberg, three small European  
17 companies countries, any other countries in place in the  
18 world where Groeneveld got a strategy of trying to go out  
19 there and register Lubecore's trade name for its trade  
12:11:23 20 address anywhere, you know of it?

21 A. No, I'm not aware of it.

22 Q. Okay.

23 Let's talk specifically for a couple minutes about  
24 these damages, claims that you made earlier.

12:11:53 25 First, you identified when we looked at Lubecore's

Wilson - Cross

1 2010 natural USA sales projections that contains a list of  
2 its distributors, a couple of those distributors that  
3 actually I think one or two actually still buybuying from  
4 Groeneveld; is that right?

12:12:16 5 **A.** Well, Frank's Quality Service is a Groeneveld  
6 distributor. Could you just sharpen it a bit? It's very  
7 difficult to read the names for me. Thank you.

8 **Q.** If you're having more trouble, I'm happy to bring it  
9 up.

12:12:47 10 **A.** No, no, that's fine. So the question is what people  
11 do we still sell to?

12 **Q.** Right. Which one of them is a dual distributor, I  
13 guess.

14 **A.** Well, I don't know if the sale to Franks Quality  
12:13:05 15 Service was a distributor of Lubecore or if it was just a  
16 projected sale, did it actually happen, but that company is  
17 a Groeneveld distributor as well.

18 **Q.** Okay. So there's two that are in some form still  
19 buying products from Groeneveld; is that correct?

12:13:22 20 **A.** The other one, I'm not sure exactly which company it  
21 was, that would have been the one owned by the Schmucks. I  
22 don't recognize their company name, North River Truck.

23 **Q.** Up to three now or four?

24 **A.** Pardon?

12:13:53 25 **Q.** Is it three now or four? I lost count?

Wilson - Cross

1 MS. MICHELSON: Objection.

2 THE COURT: Overruled.

3 Q. I'm sorry. Not trying to be confusing here. I  
4 just -- on this list of distributors, what -- you said a  
12:14:07 5 couple names and you're rattling them off and I'm not trying  
6 to unfairly summarize you. What's the total number of these  
7 folks that are still buying Groeneveld parts, products?

8 A. Under those company names, Frank's Quality Services.

9 Q. Okay.

12:14:26 10 A. And as I said, you were the one who said I previously  
11 said two. So all I was confirming was that we have a  
12 distributor whose last name is Schmuck and it was mentioned  
13 that they are also the people with North River Truck.

14 Q. So there's two of them, the -- that the people have  
12:14:50 15 sum relationship with. I guess they operate under a new  
16 name now, but essentially two?

17 A. Today.

18 Q. Okay. And that's okay, right? There's nothing  
19 unusual in particular about a distributor carrying more than  
12:15:04 20 one product line, is there?

21 A. What do you mean unusual?

22 Q. There's lots of folks out there that are sales people  
23 that go around and they sell more than one product line.  
24 They offer choices to their customers. Scott Marcum does  
12:15:17 25 it. We've heard from him. He represents three or four ALS

Wilson - Cross

1 manufactures. That's not that unusual is my question to  
2 you? Does that strike you as unusual?

3 **A.** In the way Groeneveld operates, we do not -- when  
4 there's a distributor agreement, although they can each be a  
12:15:37 5 little bit different, our standard agreement calls for the  
6 company to have an exclusive area if they exclusively sell  
7 Groeneveld product. And so we do not normally have -- use a  
8 distribution channel where there are multi car lines, if you  
9 want to call it that.

12:16:04 10 **Q.** Okay. But, at the end of the day, here we have got  
11 two known Lubecore distributors that Groeneveld is still  
12 selling product to?

13 **A.** I don't think -- I don't know that Frank's Quality  
14 Services is a distributor.

12:16:20 15 **Q.** Maybe they're an end user. This is a list of Lubecore  
16 distributors?

17 **A.** Well, \$10,000 in 2010, I've never seen these numbers,  
18 so.

19 **Q.** Well these exhibits were introduced a year and a half  
12:16:35 20 ago or were a year ago at the preliminary injunction  
21 hearing, and no one -- everyone noticed then these guys were  
22 on Lubecore's list. Have you terminated them?

23 **A.** Terminated Franks Quality Service?

24 **Q.** Yeah, are you still selling the product?

12:16:50 25 **A.** No, we sell lots of product through them.



Wilson - Cross

1 Q. Okay. You've gone on at length about Groeneveld's  
2 purported financial analysis, and rather than go back  
3 through all of the number, I want to go to the bottom here.

4 You testified you're claiming that \$123,900 of  
12:17:11 5 Groeneveld's lost sales in 2009 are supposed to be -- is  
6 that the number?

7 A. Supposed to be.

8 Q. You're blaming Lubecore for the amount of sales lost,  
9 \$123,900; is that right? Just trying to go to the summary  
12:17:28 10 numbers here?

11 A. Yes, that's what I testified. I don't know if I use  
12 the word blame, but --

13 Q. And then the lost profit in 2010 is \$367,000, and  
14 you're trying to blame that lost profit on Lubecore, right?

12:17:44 15 A. Those are the damages we sustained, yes.

16 Q. And in 2011, you're trying to blame \$734,727  
17 approximately of lost profits on Lubecore, right?

18 A. That was my calculation, yes.

19 Q. All right.

12:18:03 20 So the total amount you're trying to blame lost  
21 profits on Lubecore is about \$1.2 million?

22 A. Correct.

23 Q. Okay.

24 A. For those three years.

12:18:32 25 MS. ZUJOWSKI: I'm not sure where my copy of

Wilson - Cross

1 PX-103 is, Tom. Do you have an extra one? Debbie got it,  
2 Tom, thanks. Thank you.

3 MS. MICHELSON: No problem.

4 Q. I guess I did have it up here, but we'll use hers  
12:18:57 5 because it's got some calculations on it that may be  
6 helpful. This document shows all USA actual sales numbers,  
7 right, the top of it? Nothing about this suggests that  
8 these numbers are limited to Lubecore's sales in connection  
9 with its EP-0 pump?

12:19:22 10 A. That's correct.

11 Q. If you take a look at Exhibit DX-X --

12 MS. MICHELSON: Your Honor, I have to place an  
13 objection on the record.

14 THE COURT: Overruled.

12:19:38 15 MS. MICHELSON: Thank you.

16 Q. Let's just, before we go to it, let's just remember  
17 the numbers we're dealing with here. For 2009, we'll go one  
18 year at a time. Lubecore's actual sales of all products in  
19 the U.S. are represented as \$384,000 approximately. Now, if  
12:19:57 20 you look at the document --

21 A. That says -- you said 2009. It's not on there.

22 Q. I'm sorry. I meant to say 2010, although I'm  
23 little --

24 MS. MICHELSON: I have -- Ms. Zujkowski, I  
12:20:13 25 have 2009 on this because you didn't previously give us any

Wilson - Cross

1 2009 numbers. So I have this if this helps you for the 2009  
2 numbers.

3 MS. ZUJKOWSKI: Thanks.

4 MS. MICHELSON: Sure.

12:20:38 5 (Counsel conferring.)

6 BY MS. ZUJKOWSKI:

7 Q. We'll just go with this document. I didn't realize it  
8 didn't have 2009 on there.

9 If we look at the document that only shows numbers  
12:20:51 10 related to the sale of Lubecore's EP-0 pump, the numbers in  
11 2009 are how many?

12 A. I don't know. I'm sorry. I've never seen this  
13 document before, so.

14 Q. Well, based on the document?

12:21:09 15 A. But, I can't even see the heading. Sorry.

16 Q. I'm just going to move it so you can hopefully. Total  
17 revenue column here is the one i'M trying to direct your  
18 attention to.

19 A. Okay.

12:21:28 20 Q. So for 2009, what was Lubecore's according to this  
21 document, I understand you haven't seen it before?

22 A. I'm just asking is the first line 2009 because I can't  
23 see it on the screen.

24 Q. It is. I'll help you further. So for 2009 -- in  
12:21:43 25 fact, let's do this. For 2009, it's the only item I'm

Wilson - Cross

1 showing --

2 **A.** Okay.

3 **Q.** -- line I'm showing. What number does this document  
4 reflect for total revenue column?

12:22:03 5 **A.** \$315,232 is what the column says under the column  
6 total revenue.

7 **Q.** Okay. And what about for 2010?

8 **A.** Well, I have to assume the second line is 2010, and I  
9 would trust --

12:22:17 10 **Q.** I was trying to help out with this guide here.

11 **A.** Yeah, it is truncated on my screen. You do understand  
12 that, right, so -- okay, perfect. \$474,985.

13 **Q.** Thanks. And for 2011 so far?

14 **A.** \$757,870.

12:22:39 15 **Q.** Okay. Let's remember that number for a second.

16 That's actually quite a bit less than the projected sales  
17 numbers than you were using to run your analysis, isn't it?

18 **A.** Yes, it is.

19 **Q.** Now, I understand that Lubecore's the one that made  
12:23:03 20 these projections, but it appears they were a bit  
21 optimistic. And at the end of the day, don't you think your  
22 analysis should have incorporated the real numbers?

23 **A.** I believe I personally did not have the real numbers  
24 for two reasons. I think the primary reason is that they  
12:23:26 25 were labeled as highly confidential, and I was not permitted

Wilson - Cross

1 to look at those.

2 Q. Well, let's do -- I mean we got them now and it  
3 shouldn't be that complicated of an analysis.

4 A. Okay.

12:23:37 5 Q. You called your analysis conservative, but it's really  
6 not. If you're using the real numbers --

7 MS. MICHELSON: I'm going to object to the  
8 reference to this is real numbers. There's no testimony  
9 that they are what it is.

12:23:49 10 MS. ZUJKOWSKI: There will be testimony about  
11 this document and its foundation.

12 THE COURT: Okay. Go ahead. Go ahead.

13 Q. And I'm sorry to everyone with some math, but you  
14 still have your calculator, Gail?

12:24:05 15 A. I sure do.

16 Q. Okay, good.

17 Can we apply your margin contributor or whatever it  
18 was you were calling to these numbers relatively quickly,  
19 sum up the sales numbers for the same years that you looked  
12:24:22 20 at in your analysis, and is it --

21 A. Sure.

22 Q. 53 percent?

23 A. I'll just talk out loud here. 315232 plus 474985,  
24 757,870, times .413, \$639,560.

12:24:45 25 Q. Okay. So that's about half the number that you were

Wilson - Cross

1 trying to blame on Lubecore when you were using the  
2 projected numbers instead of actual numbers?

3 **A.** The 2011 number is only to September. So you know we  
4 would have to see -- naturalize that for a full year. I  
12:25:01 5 think the previous number might have been a full year.

6 Could you put your other schedule up, please?

7 **Q.** Sure. Let's see 2011 projected sells?

8 **A.** 2084, and, the -- I don't know exactly on this  
9 schedule again, it was highly confidential. So I  
12:25:25 10 couldn't -- I was not permitted to look at the numbers, and  
11 that's why I came with my calculation based on a percentage.  
12 So this schedule said that at a certain point in 2010, the  
13 sales, actual sales were \$384,000 with a forecast of 1042,  
14 and your actual numbers are saying they were 415. Is  
12:25:56 15 that -- is that the point you're trying to make?

16 **Q.** Right, that the actual numbers are significantly less  
17 than the projected numbers that you used in your analysis?

18 **A.** Fair enough. I understand that.

19 **Q.** And I understand that the -- that the 757,000 number  
12:26:10 20 for 2011 only goes through the end of September, and that  
21 there's another couple months left in the year after that.  
22 I understand that. Did you seasonalize -- does your number  
23 then in your other analysis include some sort of projection  
24 through the end of the year or did it get cut off at the  
12:26:28 25 same time?

Wilson - Cross

1       **A.**     My other number, the only number was when we were  
2       actually sitting here. I calculated it based on the numbers  
3       that --

4       **Q.**     2011 projection here for the full year?

12:26:42 5       **A.**     Correct.

6       **Q.**     Meant to be a full projection for the full year?

7       **A.**     I believe it was a 12-month period, so.

8       **Q.**     So we add a couple more months in fairness to the  
9       sales of the \$757,000 number. We don't want to speculate  
12:26:54 10      about that, but at the end of the day, we're looking at a  
11      number that's 50 percent approximately of what you're  
12      talking about?

13      **A.**     Correct.

14      **Q.**     In your analysis?

12:27:01 15      **A.**     Correct.

16      **Q.**     Thank you.

17             You testified earlier that the first time you saw the  
18      Lubecore pump, it was dirty and grimy and you had trouble  
19      seeing the label, right?

12:27:19 20      **A.**     The first time I saw Lubecore pump via the picture, it  
21      wasn't dirty, grimy, but one of the times I saw the pump in  
22      our shop, it was a used pump, yes.

23      **Q.**     An actual pump, it was used. I mean it was dirty.

24      **A.**     Well, I have gone to trade shows, so I'm just trying  
12:27:41 25      to recall if I actually saw a pump prior to the work shop

Wilson - Cross

1 incident.

2 Q. We're not trying -- we don't have a picture of you  
3 looking at a pump in a trade show. I was just trying to  
4 refer back to your testimony.

12:27:59 5 A. It wasn't necessarily the first time I saw the pump is  
6 my only point, but --

7 Q. Fair enough. I just thought you said something to the  
8 effect you -- you did see the picture, but later you saw a  
9 real pump, and it was dirty and you couldn't tell if it  
10 was -- couldn't see the Lubecore sticker?

11 A. Correct.

12 Q. But, when you first saw these products, they are  
13 reasonably clean?

14 A. Absolutely, yes.

12:28:17 15 Q. In fact, we got on the table here Defendant's Exhibit.  
16 Lubecore's pump exhibit is brand new?

17 A. Correct.

18 Q. By the time any customer's pump becomes dirty and  
19 grimy, typically he already owns it, right?

12:28:32 20 A. Yes.

21 Q. So he's not going to be confused about its source just  
22 because now there's some dirt on his pump?

23 A. About its source, yes. I'm not -- I mean if you look  
24 at it in use on a truck that's moving, perhaps you might  
12:28:56 25 think the Lubecore pump's a Groeneveld.



Wilson - Cross

1 THE COURT: That wasn't the question, but  
2 we'll break here for lunch. Okay? Lunch.

3 MS. ZUJKOWSKI: Your Honor, I had one more  
4 line. I don't know if that makes -- I don't mind. I'm  
12:29:08 5 happy to say it after lunch,

6 THE COURT: We'll let you say it after lunch.

7 MS. ZUJKOWSKI: Pardon?

8 THE COURT: We'll let you say it after lunch.

9 MS. ZUJKOWSKI: All right.

12:29:16 10 THE COURT: Folks, 1:45 downstairs.

11 Mr. Yarger, does that sound good?

12 A JUROR: Yes, sir.

13 THE COURT: Have a good lunch. See you then.

14 (Thereupon, a luncheon recess was had.)

12:30:47 15

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Wilson - Redirect

1 Tuesday Session, October 18, 2011, at 1:45 P.M.

2 THE COURT: Good afternoon, ladies and  
3 gentlemen.

4 THE JURY: Good afternoon.

13:51:29 5 MS. ZUJKOWSKI: Lubecore has no further  
6 questions. Thank you.

7 THE COURT: There you go. See what a break  
8 does?

9 (Laughter.)

13:51:37 10 MS. MICHELSON: I'm sorry, but I do have some  
11 redirect then.

12 THE COURT: We're not surprised.

13 (Laughter.)

14 THE COURT: I couldn't help it.

13:51:49 15 REDIRECT EXAMINATION OF GAIL WILSON

16 BY MS. MICHELSON:

17 Q. I do need to clear up a few things. One second,  
18 please. Just have to find it in my stack.

19 MS. MICHELSON: I'm so sorry about that.

13:52:45 20 THE COURT: No problem. I'll start anyway  
21 because I know where I'm going to start.

22 Q. Ms. Wilson, we were talking about -- we were talking  
23 about --

24 A. Lots of things.

13:53:33 25 Q. Yes, but I'm going to start with your damages

Wilson - Redirect

1 calculations. First, on what is Exhibit 103, I just would  
2 like you to confirm that the handwriting on that document  
3 accurately reflects the testimony that you gave about the  
4 calculations, the math that you did on the stand that I  
13:54:09 5 wrote down as you testified.

6 **A.** If you want me to recheck it to see if you wrote it  
7 down correctly, but --

8 **Q.** I was writing it down as you spoke, but I want to make  
9 sure.

13:54:27 10 **A.** Well, I'll just -- it was calculation as -- I'll need  
11 you to make it more crisp for me, please.

12 **Q.** No problem. And if you want me to bring it and hand  
13 it to you, I can do that as well.

14 **A.** No, I'm almost done. Thank you. The numbers that are  
13:55:32 15 written here are the calculations that we did, yes.

16 **Q.** Okay.

17 And -- I found it. Okay. And I'm going to ask you to  
18 do the same thing on this other exhibit, just confirm that  
19 the handwritten calculations accurately reflect the  
13:55:57 20 testimony that you gave, and I'm reading from now what's  
21 Exhibit 135 as to the amount you calculated of \$123,900 on  
22 sales of 200 ALS EP-0 systems in 2009. If those would have  
23 gone to Groeneveld.

24 **A.** Yes, that's correct.

13:56:24 25 **Q.** And I think we need to clarify this for the jury. Did

Wilson - Redirect

1 you have access to this document -- did I share this  
2 document with you before you got on the stand here in court  
3 today?

4 **A.** No.

13:56:51 5 **Q.** Okay. And why not? Why couldn't I just give that to  
6 you so that you could do all your work on this before coming  
7 into court?

8 **A.** Well, what I understood during some of the previous  
9 sessions and process in this eventual trial were that some  
13:57:14 10 items were highly confidential and that meant although the  
11 attorney could look at it, I -- because of the sensitive  
12 nature, I was not permitted to look at the details.

13 **Q.** And reading down -- reading down here, there's a  
14 Bates, what's called a Bates number, lube, and there are a  
13:57:36 15 bunch of zeros , 296, and can you confirm that that  
16 indicates that the source of this document in and the  
17 information was Lubecore itself, and that this was -- these  
18 were items that were presented to your lawyers in discovery  
19 during the discovery process?

13:57:54 20 **A.** It wasn't a schedule that was prepared by me and so I  
21 will assume it was prepared by Lubecore and given to you,  
22 yes.

23 **Q.** And so when you sat here in court and did your  
24 calculations, excepting these numbers on the document 103,  
13:58:18 25 whose numbers were you accepting and relying on to do these

Wilson - Redirect

1 calculations in court?

2 **A.** I'm relying on the Lubecore numbers to do the call --  
3 to be the starting point in that formula for the calculation  
4 for the total dollar damage.

13:58:44 5 **Q.** And were you provided with any numbers, other than  
6 those on this document that I -- that I referenced during  
7 your direct examination, other than what they said their  
8 true and accurate numbers were a year ago when they gave  
9 this to me?

13:59:06 10 **A.** Well, I believe the 200 units from 2009 was an  
11 additional number that was not part of the confidential  
12 information, and that was one of the calculations we did on  
13 the other sheet, yes.

14 **Q.** And that information actually came from Mr. Eissis  
13:59:25 15 testimony under oath in the case?

16 **A.** Correct.

17 **Q.** And you relied on that when you did your calculations  
18 here in court as to Groeneveld's lost sales damages?

19 **A.** Correct.

13:59:34 20 **Q.** There was some suggestion in cross-examination that  
21 somehow, it was unfair or it is unfair to rely on Lubecore's  
22 representations as to its numbers here.

23 Did you have any other numbers to rely on?

24 **A.** No, other than -- sorry, other than what I had  
14:00:22 25 mentioned about the known numbers that I have where I knew,

Wilson - Redirect

1 for instance, what we sold to Fuel Systems in previous years  
2 and when those numbers stopped.

3 Q. Yeah. And this new Defendant's Exhibit X, you were  
4 asked questions about that. I wrote on -- they marked these  
14:01:09 5 documents highly confidential as well?

6 A. Correct.

7 Q. You never had any opportunity before seeing them for  
8 the first time in court here to take a look at those  
9 numbers?

14:01:25 10 A. Not at all.

11 Q. Is there anything, is there supporting information or  
12 documentation included in this exhibit that corroborates the  
13 accuracy or the veracity or the reliability of any of the  
14 numbers that they now are saying are the actual numbers?

14:01:50 15 Maybe you want to -- I should hand it to you because there  
16 are a few pages and you've never seen this before?

17 A. Yeah, it was difficult to read because of the size of  
18 the monitor.

19 So sorry. What was the question?

14:02:10 20 Q. Is there any supporting documentation included in  
21 those five pages that corroborate where the information came  
22 from, whether it's accurate or reliable or not, anything  
23 along those lines?

24 A. Well, I mean I have to trust if somebody put something  
14:02:32 25 on paper that it's accurate. It doesn't have an auditor's

Wilson - Redirect

1 stamp on it saying it was, you know, saying it was filed for  
2 tax purposes, but --

3 Q. So actually tax returns or audited financial  
4 statements, those would accurately tell us what the true  
14:02:52 5 numbers indeed are from Lubecore, would they not?

6 MR. ANASTOS: Objection.

7 THE COURT: Overruled.

8 THE WITNESS: Well, if -- a set of financial  
9 statements has some type of auditor's report. Then  
14:03:06 10 depending on the style of the report, it does -- it's more  
11 of that independent verification, but it's not necessary for  
12 all companies to have audited reports, so.

13 Q. But, an audited financial report would be an  
14 independent assessment of the accuracy, reliability, and  
14:03:24 15 veracity of the numbers that the company is at least  
16 reporting?

17 A. Correct.

18 Q. Okay. Do you see anything along those lines in this  
19 piece of paper? They've written numbers on --

14:03:39 20 A. No, I don't.

21 Q. Does anything in here even identify the source of the  
22 information where they supposedly got these numbers?

23 A. No, it doesn't say where they came from, specifically.

24 Q. And --

14:03:58 25 A. Says financial results, activity in the USA.

Wilson - Redirect

1 Q. Okay.

2 And are you aware that that highly confidential  
3 document that I couldn't even share with you because of the  
4 confidentiality restrictions, that wasn't even handed to me  
14:04:16 5 until the Tuesday late afternoon, a day and a half before  
6 the trial was supposed to start, are you aware of that or --

7 A. I was in your office on --

8 Q. You don't want to tell what lawyers and clients are  
9 talking about.

14:04:33 10 A. On Tuesday, and that was when the binder was  
11 delivered. So sorry if I've -- I wasn't supposed to say  
12 that.

13 Q. No, that's okay. This is the first time I even got it  
14 was when they presented this exhibit binder a day and a half  
14:04:47 15 before trial, right?

16 A. Correct. It also is -- with information up to  
17 September 31st, which I think is just a small typo, but  
18 September 30th. So it would have been prepared some time in  
19 October. So it definitely is recent.

14:05:11 20 Q. I see. Oh, yeah because there are only 30 days in  
21 September, right?

22 A. It feels longer some Septembers, depending upon --

23 Q. October is sure feeling long this year, but I'll tell  
24 you that much.

14:05:25 25 I have a question for you about this document. I'm



Wilson - Redirect

1 turning to page X-2. I need another one. You had testified  
2 in direct basically about the percentage of Groeneveld's  
3 sales attributable to certain EP-0 ALS products. Do you  
4 recall that testimony?

14:06:05 5 **A.** Yes.

6 **Q.** I had asked you what's the percentage for the --  
7 versus the loose parts, the systems versus the loose parts,  
8 and if you could turn to Page X-2?

9 **A.** Yes.

14:06:21 10 **Q.** Is there a way for you to -- up there, I know for the  
11 first time, calculate Mr. Eissis's percentages?

12 **A.** Every company separates their product information  
13 differently. So this is a little bit unusual. So there's  
14 revenue from the column -- revenue EP-0 single-line pump,  
14:07:01 15 and I'm looking at the 2009 sheet, \$43,666, and that as a  
16 percentage of their total revenue says that it's 13.9  
17 percent.

18 **Q.** And so the percentage of the other ALS product sales,  
19 under this loose part revenue, loose parts?

14:07:32 20 **A.** Yes, okay. So I would assume, but perhaps Lubecore  
21 can answer themselves, that this is only the revenue for  
22 just the pump.

23 **Q.** When you say this, you're talking about the revenue  
24 under the column revenue EP-0 single-line pump?

14:07:55 25 **A.** Just for that pump, which is not a system. You have

Wilson - Redirect

1 to attach line and inject Orlacos and manifold blocks and  
2 other things. That's just the mechanism that pumps the  
3 grease to the lubrication points on the piece of equipment.

4 So I assume those other things are under revenue loose  
14:08:19 5 parts. And that percentage is 86, 86.1 percent.

6 **Q.** Based on your experience handling numbers and in the  
7 industry, and Groeneveld's own percentages on its gross  
8 revenues, is there anything -- you have any comment or  
9 observation about these reported figures of the -- I think  
14:08:58 10 you said 13.9 percent and then the 86 --

11 **A.** I mean it certainly seems low, the percentage of just  
12 the pump sale to the total, but I'm --

13 **Q.** Why?

14 **A.** Why? I'm not sure.

14:09:19 15 **Q.** Oh, no. Why does it seem low?

16 **A.** As I said, from Groeneveld's point of view, a full  
17 system when we sell it, the portion of the pump to the total  
18 selling price is more around 35 percent.

19 **Q.** What item in the complete system is the most expensive  
14:09:42 20 item? Because you're talking about the manifold blocks or  
21 distribution blocks and the timer and some additional  
22 outside components, and then the pump?

23 **A.** Boy, that's a good question, and I wish I could answer  
24 it. Generally, the pump is, you know, the most expensive  
14:10:12 25 item, but as I say, it's not necessarily the -- it's not

Wilson - Redirect

1 the way I look at it. I look at it a complete system.

2 Q. You said there's something unusual about the way  
3 they're recording this information, and I -- I'm just  
4 wondering what it is. You and I haven't had a chance to  
14:10:29 5 talk about this document before, but --

6 A. I'm saying it's unusual because they've got it in  
7 categories. They have the pump separated from loose parts.  
8 I'm not -- I'm not sure why I would take that out and  
9 separately highlight it. That's the only thing that I said  
14:10:48 10 was unusual.

11 Q. Okay.

12 Oh, yes, they calculated that percentage figure in  
13 here. Okay. On cross-examination, there was questions  
14 about the distributors and the cross over, whether  
14:11:19 15 they're -- who of those identified distributors on this  
16 document, 103, still handles Groeneveld products? Do you  
17 recall those questions on cross-examination?

18 A. Yes.

19 Q. Okay.

14:11:40 20 So if you could just refresh my memory because it was  
21 a little confusing for me.

22 I know you said Frank's Quality Services?

23 A. Can you put the list under --

24 Q. Yes, I can. Sorry.

14:12:00 25 A. Okay. The ones that I recognize that we currently

Wilson - Redirect

1 sell to Groeneveld currently sells to in the United States,  
2 Frank's Quality Service also goes by FQS, and I think the  
3 other confusion --

4 **Q.** The Michigan company I thought you said?

14:12:29 5 **A.** Well, North River Truck, which probably is a trucking  
6 company, but owned by the Schmuck company, at least they  
7 have an interest in that. They actually own Groeneveld  
8 Michigan, our distributor, and we currently do business with  
9 them.

14:12:54 10 **Q.** Okay. So now that we have this Lubecore supposed  
11 actual number, I'm going show you X-2, Defendant's Exhibit  
12 X-2, and show you in 2010, 2010 -- in 2010, how much did  
13 they sell to Frank's Quality Service, Lubecore?

14 **A.** It appears they provided that company with something  
14:13:45 15 but didn't charge them for it, but it was only \$208.

16 **Q.** Okay. Is that -- is that a full charge for a complete  
17 ALS system?

18 **A.** Oh, no, no -- unless they're in the -- not that I'm  
19 familiar with.

14:13:59 20 **Q.** Okay.

21 And here going back to 2009, I don't see -- I don't --  
22 can you just confirm -- and for the record, it's Exhibit  
23 DX-2 -- confirm Frank's Quality Service doesn't appear on  
24 this new spread sheet they just gave us, correct?

14:14:18 25 **A.** That's correct.

Wilson - Redirect

1 Q. And here's 2011, which is DX-4. And can you just look  
2 through this list and confirm that?

3 Frank's Quality Service isn't on here, so that isn't  
4 that dual dealership thing you were asked questions about in  
14:14:39 5 cross exam, correct?

6 A. Not between Lubecore and Groeneveld.

7 Q. Sorry. Not between?

8 A. Not between Lubecore and Groeneveld, no.

9 Q. So Franks's Quality Service isn't -- at least doesn't  
14:15:04 10 appear on this list as buying any ALS products from in 2011,  
11 according to Lubecore?

12 A. Not that's on this list, that's correct.

13 Q. Yeah, there are a few of them. And here's the other  
14 company you described that was North River Truck?

14:15:29 15 A. Correct.

16 Q. So they got one there?

17 A. Correct, \$2362.

18 Q. Anything for North River Truck identified in 2010 as  
19 per DX-3?

14:15:46 20 A. No.

21 Q. Okay.

22 Does Groeneveld permit and authorize its dealers, its  
23 distributors to carry competing ALS products?

24 A. Our standard distribution agreement does not.

14:16:28 25 Q. There were -- there were a lot of questions about

Wilson - Redirect

1 other factors, other variables that could have had an impact  
2 on Groeneveld's gross sales revenues from the ALS products,  
3 other than Lubecore. You recall those questions on  
4 cross-examination? Is Groeneveld asking for Lubecore to be  
14:16:53 5 responsible for the entirety of its sales -- sales  
6 difference between 2009 and '10 or 2011 for the entirety of  
7 it?

8 **A.** No, I think it's -- we're taking sort of a  
9 conservative approach. We don't want to -- we don't have  
14:17:12 10 enough information to say our entire sales drop is due to  
11 Lubecore. There are many variables.

12 **Q.** And in your direct examination -- in your testimony,  
13 were you attempting to somehow convey the impression that  
14 Groeneveld is entitled to every dollar in diminished sales  
14:17:34 15 between 2009 and 2010 because Mr. Eissis entered the market  
16 with Lubecore product?

17 **A.** No, the purpose of the schedules that I previously  
18 provided was to get a general idea about the size of our  
19 business over the years, and it wasn't meant to give the  
14:17:58 20 impression that the reason -- the entire reason that our  
21 sales have dropped is because of Lubecore, that -- that was  
22 never --

23 **Q.** Just to kind of make this final point, the gross  
24 revenues figure that you plugged into your contribution  
14:18:21 25 margin calculation, where does that number come from? Where

Wilson - Redirect

1 did you get that number?

2 **A.** That is -- those numbers are the total USA -- I don't  
3 think I have a hard copy of that. Just want to make sure  
4 again.

14:18:42 5 **Q.** Well, let me --

6 **A.** Yeah. It's the total USA profit and loss statement  
7 according to our books and records, which have been reviewed  
8 by our auditors. I didn't say it was reviewed by the  
9 auditors on here, but --

14:19:02 10 **Q.** Okay. That's on the contribution margin and the gross  
11 revenues that you -- the gross revenue numbers that you plug  
12 into this calculation to this formula, in order to calculate  
13 the sales that Groeneveld said it would have had but for  
14 Lubecore taking those sales, where did those numbers come  
14:19:30 15 from?

16 **A.** It -- the purpose of this analysis was to a  
17 contribution margin percentage so that it could be applied  
18 against a number which was the Lubecore sales.

19 **Q.** So those numbers came from Lubecore sales figures  
14:19:54 20 provided in the course of this lawsuit, correct?

21 **A.** On the other schedule.

22 **Q.** This one?

23 **A.** Sorry?

24 **Q.** 103?

14:20:03 25 **A.** The sample formula, the gross revenue, to be used to

Wilson - Redirect

1 calculate the loss sales damages would be the revenue from  
2 Lubecore.

3 Q. And so these -- these numbers that appear on Exhibit  
4 103, contribution margin that you apply is applied to whose  
14:20:32 5 sales figures?

6 A. Our costs structure to Lubecore's sales figures  
7 provided on that sheet.

8 Q. That sheet meaning the Lubecore document Exhibit 103?

9 A. Exhibit 103, yes.

14:20:47 10 Q. You were asked about the situation with Mr. Boronco?

11 A. Yes.

12 Q. And can you just tell the jury what happened with  
13 Mr. Boronco?

14 I'm going to show you what we've marked as Plaintiff's  
14:21:22 15 Exhibit 105-3 and ask if you recognize this as a termination  
16 letter that -- that Groeneveld sent to Mr. Boronco?

17 A. Yes.

18 Q. And it's signed by whom?

19 A. Brian Covella.

14:21:40 20 Q. Who was he?

21 A. He was Transport Efficiency at that time, the director  
22 of North American operations and chief operating officer.

23 Q. And did you see this letter and were you aware of it  
24 in the course of Groeneveld's business?

14:21:53 25 A. Yes.



Wilson - Redirect

1 Q. And it's directed to whom?

2 A. To Louis Boronco.

3 Q. What's the date on that document?

4 A. December 1, 2009.

14:22:02 5 Q. And his -- is this one -- is this a Groeneveld  
6 business record?

7 A. Yes, it is.

8 Q. Can you please read the narrative at least in the  
9 first paragraph to the jury, please? Can you see it? Maybe  
14:22:19 10 I'll make it bigger.

11 A. I don't know if I should take my glasses off or keep  
12 them on. That's perfect. "Re: Termination of installer  
13 agreement. Dear Lou, it's come to our attention that a  
14 breach of your agreements with Groeneveld, you are now in  
15 business with Lubecore. After treating you well for many  
14:22:35 16 years and even arranging our business together so that you  
17 were able to clear your old delinquencies, we were very  
18 surprised to learn of your present actions. Given the  
19 circumstances, effective immediately your third party  
14:22:54 20 installer agreement is terminated, and we will no longer  
21 accept your purchase orders. You may not hold yourself out  
22 as being a Groeneveld dealer or installer or as having any  
23 other relationship with Groeneveld. You are no longer  
24 authorized to provide any services for us under Groeneveld's  
14:23:14 25 warranties, and we will not consider any services you

Wilson - Redirect

1 provide for payment. We demand that you immediately return  
2 to us all Groeneveld property in your possession --  
3 position -- possession, sorry, including all kits, parts,  
4 and sales literature. Finally, we must remind you of the  
14:23:31 5 confidentiality noncompetition and other obligations that  
6 survive your various agreements which will be enforced.  
7 Based on agreement, the foregoing applies to you and your  
8 entities. We will pursue all available remedies in the  
9 event of any breaches."

14:23:59 10 **Q.** Thank you.

11 You were asked questions suggesting that there was  
12 customer -- there were customer -- poor -- customers had  
13 poor experiences with Groeneveld, and I like to ask you to  
14 tell the jury about warranty claims on Groeneveld ALS  
14:24:25 15 products. And if you could just explain to them?

16 MS. ZUJKOWSKI: I think this is outside the  
17 scope of my cross. But --

18 THE COURT: Is there an objection?

19 MS. ZUJKOWSKI: Objection.

14:24:36 20 THE COURT: Sustained.

21 BY MS. MICHELSON:

22 **Q.** Are you aware of any evidence that there has been  
23 expression of dissatisfaction or complaints or experience  
24 with Groeneveld's by the end users of these products?

14:24:50 25 **A.** Well, I -- no company is ever perfect. I'm sure

Wilson - Redirect

1 somewhere out there will be examples, you know, where we can  
2 meet everybody's expectation but I absolutely assure you  
3 from a warranty cost point of view, it's such a small number  
4 in our day-to-day operations that we don't create even a  
14:25:11 5 separate cost for it because the product reliability and  
6 quality is there, and there's not that many dollars spent  
7 with correcting a customer dissatisfaction with our product.

8 **Q.** The -- there were questions on cross-examination about  
9 the fact that Groeneveld isn't suing distributors or third  
14:25:48 10 party installers, and I'd like to direct your attention to  
11 that area of inquiry. And my question is that's true,  
12 right, Groeneveld isn't suing those people, is it?

13 **A.** No, we are not.

14 **Q.** So why are you going after the manufacturer of the  
14:26:08 15 product, the Lubecore product, the guy who brings it into  
16 North America and distributes it here in North America?

17 **A.** This claim is about trade dress, and unfair trade  
18 practices, and it's not the distributor who has manufactured  
19 that product and the program. It's Lubecore International,  
14:26:52 20 and that's why our dispute is with Lubecore.

21 **Q.** There were questions about the website, the  
22 autolubeparts.com website and the Fuel Systems website on  
23 cross-examination. I'm just directing your attention to  
24 that area of inquiry. And you start -- you didn't get a  
14:27:19 25 chance to fully explain what the point of that -- of that --

Wilson - Redirect

1 what the point of that is in connection with the issues  
2 here.

3 Can you finish your answer for the jury, please?

14:27:46 4 **A.** I -- I'm not sure honestly, unless you read it back to  
5 me, exactly what the question was and where I sort of  
6 stopped. So.

7 **Q.** All right. Well, let me -- let me try and phrase my  
8 question better for you because that could be my fault.

9 What's the relevance of the information on the  
14:28:13 10 Lubecore distributor web sites where you put the word  
11 Groeneveld into a search bar and a picture of a Lubecore  
12 pump comes up?

13 **A.** The relevance is that it's damned confusing.

14 **Q.** Similarly, if you type into a Google search bar, or  
14:28:35 15 beginning search bar I suppose or any other search engines,  
16 Groeneveld, or Groeneveld grease systems or Groeneveld  
17 greasing systems and distributor website comes up. What's  
18 the relevance of that?

19 **A.** Again, if somebody probably like me who doesn't know  
14:28:54 20 how you get your name to the front page and to the sponsored  
21 list types in it because they're looking for Groeneveld and  
22 it comes there, then you know they're going to say, Okay,  
23 there, I'm -- hey, must be in the right spot. I'm in Ohio.

24 **Q.** You know, and I -- close to done actually. This pump  
14:29:16 25 that's in front of you on the table, let -- when did you

Wilson - Redirect

1 start with Groeneveld?

2 **A.** In August of 2006.

3 **Q.** Okay. And were you ever asked questions about this  
4 particular pump before being on the stand here today?

14:29:36 5 **A.** No, I wasn't.

6 **Q.** Were you ever shown a picture of it in any of the  
7 other proceedings in the case?

8 **A.** No, I wasn't.

9 **Q.** Okay. Do you know why they would show this to you  
14:29:48 10 instead of Willem VanderHulst until after he goes back to  
11 Italy and can't explain where in the Groeneveld history this  
12 thing fits in?

13 Let me rephrase my question. Will Willem have had  
14 more information about this particular item than you do?

14:30:04 15 **A.** Oh, absolutely.

16 **Q.** And what about Martin Vermeulen, their own witness,  
17 whose trial testimony has already been committed to video.  
18 Do you think he might have some more information about this  
19 particular pump and where it fits in in the history of the  
14:30:20 20 company than you?

21 **A.** Yes, I do.

22 MS. MICHELSON: I don't have any further  
23 questions.

24 THE COURT: Anything further?

14:31:04 25 MS. ZUJKOWSKI: Unfortunately yes, but I'll be

Wilson - Redirect

1 brief.

2 THE COURT: The jury's beginning to understand  
3 after a week when the lawyer says I'll be brief, they should  
4 sit back and get a cup of coffee.

14:31:15 5 MS. ZUJKOWSKI: I think I stuck to my word on  
6 it.

7 THE COURT: Okay. You have. This was the  
8 witness who was going to take 20 minutes, remember?

9 (Laughter.)

14:31:25 10 THE COURT: That was 24 hours ago.

11 (Laughter.)

12 RECROSS-EXAMINATION OF GAIL WILSON

13 BY MR. ZUJKOWSKI:

14 Q. Gail, you just testified you're not trying to  
14:31:32 15 attribute all of Groeneveld's loss sales to Lubecore, right?

16 A. Correct.

17 Q. Let's just look at 2009 to 2010 on \*\*began document  
18 your counsel's been using. Not an exhibit in this matter,  
19 but is that in focus enough for you in the upper right-hand  
14:31:48 20 corner?

21 A. Yep, that's clear.

22 Q. Approximately, and we've helped you with the math  
23 here. What are Groeneveld's last sales from 2009 to 2010?

24 A. This is -- these are the total sales for the U.S.,  
14:32:21 25 including all of our U.S. entities and all of our products.

Wilson - Redirect

1 And the sales in 2010 were \$6,486,000, and the sales in  
2 2009, \$6,586,000. So the math on that is roughly \$100,000  
3 difference.

14:32:51

4 **Q.** All right. So the total for -- you just said on  
5 everything, too, all three entities in the U.S. and all  
6 products, too, is it?

7 **A.** Yes.

8 **Q.** Is \$100,000?

9 **A.** Yes.

14:32:57

10 **Q.** That same year, Mr. Eissis sold four times that much  
11 in Lubecore pumps, ALS products alone, right, associated  
12 parts?

13 **A.** Yes.

14:33:25

14 **Q.** So you're actually, every last dollar and then some,  
15 you're putting right on here?

16 **A.** As I mentioned, the total sales on that previous  
17 schedule that you showed me is for all of the U.S., for all  
18 of our products, and there are market fluctuations in the  
19 various industry sectors. I believe there was another  
20 schedule which was just the EP-0 sales, and it -- it will  
21 show a little bit of a different trend than the total sales.

14:33:52

22 **Q.** Will it give us a lower number? You want to help me  
23 find that page if you want to look at that number?

14:34:19

24 **A.** Yeah, it's the -- at the previous -- it was deposition  
25 Exhibit 47.

Wilson - Redirect

1 Q. Rather than try to pull up the document, what number  
2 you think is a fair number for the sales decline for that  
3 year, EP-0 pumps? We'll use whatever number you want.

14:34:45

4 A. Could you show the left-hand side of your schedule on  
5 the monitor, please?

6 Q. The same page we were on?

7 A. Yeah, that page that you had up. Sorry, just wanted  
8 to see the headings. No, the Lubecore document. That's the  
9 one.

14:35:00

10 So as I previously mentioned, if there's anything  
11 that's in sort of Florida, the northwest, United States,  
12 Utah, which are not part of the selling territories, unless  
13 it's a national account for trans -- Groeneveld Transport  
14 Efficiency, Inc., then I believe what's fair is that all of  
15 those sales of \$474,985, if that's the full extent of the  
16 Lubecore sales, minus \$45,925 for Florida, would be lost  
17 sales for Groeneveld Transport Efficiency, Inc.

14:35:28

18 Q. You're still talking about a number that's four times  
19 Groeneveld's total loss sales for that year?

14:35:53

20 A. No, it is not. Sorry if I -- I will wait if you want  
21 to find that exhibit. It -- I'm not --

22 Q. I guess I am trying to understand where is it at  
23 the -- I'm sorry, where are the discount, where is the  
24 discount coming from? How is your approach conservative?

14:36:14

25 A. Sorry. I didn't hear what you said.



Wilson - Redirect

1 Q. Where -- when you say that you're not trying to  
2 attribute all of your lost sales to Lubecore's entry into  
3 the market, and that rather you're taking into consideration  
4 all of the other things we talked about, the possibility of  
14:36:29 5 downturn in the economy, other competitors, price  
6 competition, you know, everything else, where is it in this  
7 analysis that those things are given some kind of discount  
8 factor when coming up with your damages number?

9 A. I don't think Lubecore can impact the downturn in the  
14:36:49 10 economy, so maybe I'm not understanding the question, but if  
11 you pull up this exhibit.

12 THE COURT: Look, can you answer her question?  
13 Where is the discount?

14 THE WITNESS: The discount to?

14:37:01 15 THE COURT: For all the things she just said.

16 BY MS. ZUJKOWSKI:

17 Q. How are you factoring those concepts into your  
18 analysis rather than just putting every last dollar of your  
19 last sales on the Lubecore? How are you being conservative  
14:37:14 20 to take those factors into account?

21 A. Because I didn't take into account sales that we make  
22 to others that may have been decreased due to confusion  
23 where the customer just simply doesn't purchase anything,  
24 but I haven't discounted the Lubecore sales for those other  
14:37:43 25 factors. I've discounted my own sales for those factors.

Wilson - Redirect

1 Q. Thank you very much. Thank you.

2 THE COURT: Is that it, Melissa?

3 MS. ZUJKOWSKI: Thank you. Yes, your Honor.

4 THE COURT: Thank you. You're excused. You

14:37:57 5 may call your next witness.

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Burke - Direct

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MS. MICHELSON: Yes, we call John Burke.

MR. ANASTOS: Objection, your Honor.

THE COURT: Come on up here. Stand up and stretch, folks.

(Discussion at side bar off the record.)

THE COURT: Dr. Burke, raise your right hand, will you, sir.

JOHN BURKE,

of lawful age, a witness called by the PLAINTIFF,

being first duly sworn, was examined

and testified as follows:

DIRECT EXAMINATION OF JOHN BURKE

THE COURT: Last time he was here, he was Santa Claus. What did you do?

THE WITNESS: I will be again this year.

THE COURT: Doctor, tell us who you are.

THE WITNESS: Good afternoon. My name is John F. Burke, Junior.

BY MS. MICHELSON:

**Q.** Dr. Burke, can you tell the jury where you live, what you do for a living, where you're from?

**A.** Yes. A lot of questions. I live in Cleveland Heights, Ohio. What I do is I am an economist, and I

practice that in a couple ways. I teach economics currently

Burke - Direct

1 at John Carroll University. And where am I from? I'm from  
2 all over the place. I was born in Maine, I grew up in  
3 Massachusetts. I went to school in South Bend, Indiana.  
4 I've been married in Michigan, the first time. I taught  
14:42:01 5 economics in Illinois. I taught economics in Indiana. Most  
6 of my teaching career has been teaching economics in  
7 Cleveland. First at Cleveland State University, and now at  
8 John Carroll University.

9 **Q.** And, sir, can you just describe for the jury please  
14:42:20 10 your educational background and -- thank you.

11 **A.** Yes, as I mentioned I grew up in the Boston,  
12 Massachusetts area, went to primary and secondary schools.  
13 Right after high school, I served a tour of duty in the  
14 United States Navy, and that's where I got my best  
14:42:36 15 education.

16 After the Navy, I attended Boston College, graduating  
17 from BC in 1961 with an undergraduate degree in economics,  
18 awarded a full scholarship to attend the University of Notre  
19 Dame in South Bend, Indiana. Masters Degree in Notre Dame  
14:42:53 20 in 1963 in economics. Continued working at Notre Dame and  
21 was awarded a Ph.D., Doctor of philosophy in economics in  
22 1967. Did some postdoctoral work at the University of  
23 Chicago in the summer of 1967, but there was no degree  
24 associated with that program in Chicago. That's my formal  
14:43:12 25 education. But I'm still a student of economics still

Burke - Direct

1 reading, still trying to learn, still trying to work my way  
2 up the curve.

3 Q. And do you also, as well as learning, do you also  
4 teach?

14:43:24 5 A. I do. I've taught economics for a long time. First  
6 at Notre Dame as a teaching assistant while I worked on my  
7 own degree, and then at Indiana University as an instructor  
8 in economics, and then at Eastern Illinois University in  
9 Charleston, Illinois, as Assistant Professor of Economics.

14:43:44 10 And then the late 1960's, I was off on a job with a  
11 brand new school in Cleveland, Ohio, the Cleveland State  
12 University. When I arrived on that campus, we were teaching  
13 in temporary buildings. I'm amazed what has happened to  
14 that place. I taught there for 27 years, retired from  
14:44:03 15 full-time teaching in the 1990s, with 37 years of public  
16 service. They let you buy your military time and other  
17 stuff like that. I was out of the classroom for a couple of  
18 years, and then in the late 1990s John Carroll University  
19 called, and I now teach one course a semester if the  
14:44:23 20 university needs it.

21 Q. And, sir, can -- I know you've written a lot, but can  
22 you just describe for the jury some of the articles or  
23 publications you've authored that relate to the work that we  
24 asked you to do in this matter?

14:44:38 25 A. Yes.

Burke - Direct

1 Most of my writing was done when I was a younger man.  
2 Writing is a younger man's job in the academic life although  
3 I did get something published last year. But a lot of it  
4 was on state and local taxes, impact on the citizens when  
14:44:54 5 the Government taxes us, impact on our citizen when the  
6 Government spend that taxpayers' money, I also have  
7 published in the matters area of how to evaluate a business,  
8 published in the area of the economic relationship between  
9 law and economics. I've also done a lot of work in how  
14:45:14 10 families spend their money, but as I said, most of those  
11 publications were done when I was a younger guy. I  
12 published something in the 1990s and published something  
13 last year. But, most of it was done when you're a young  
14 man. As a young man's job.

14:45:29 15 **Q.** And instead of going through more of your professional  
16 achievements and associations, I'm going to just slow you  
17 what we've marked PX 140. Thank you. 140-1 through 140-8.  
18 And can you confirm please for the jurors that this is a  
19 copy of your curriculum vitae?

14:45:58 20 **A.** It is it's my resumé.

21 **Q.** Thanks.

22 So, Dr. Burke, what did we ask you to do in this case?

23 **A.** The assignment you gave me was to look at a company,  
24 and determine the relationship between its costs, how much  
14:46:22 25 of its costs to fix, how much of its cost is variable and

Burke - Direct

1 you want to determine that so you would know that if you add  
2 an additional dollar of sales or \$1 million additional sales  
3 at the top of this company, how much flows out of the  
4 company, that would be variable costs, how much stays with  
14:46:41 5 the company, that's profit and the contribution to fix cost  
6 that was part of my assignment. My other assignment was to  
7 look at sales of alternative company, and to say if the  
8 first company had been able to make the sales of the second  
9 company, what impact would that have on the bottom line of  
14:47:02 10 the first company.

11 Q. And the first company just so we're all clear, the  
12 first company being Groeneveld, the plaintiff in the case,  
13 the second company being Lubecore the Defendant in this  
14 case?

14:47:12 15 A. Yes, ma'am.

16 Q. And were you able to do that work?

17 A. Yes, ma'am.

18 Q. Now, the first -- before we get to what exactly what  
19 you did in this case, can you just explain to the jurors  
14:47:27 20 what an economist does and how an economist is able to do  
21 the assignment that you have just described?

22 A. Yes, sir.

23 Q. Thanks.

24 A. An economist is a social scientist, an economist -- we  
14:47:40 25 look at people and businesses and entities and say how does

Burke - Direct

1 this business earn its income. If you're a person, do you  
2 put your time out for a wage or a salary or a commission?  
3 How do you earn a living. If you're a building, how do you  
4 earn your rents? If you're a business how do you earn your  
14:48:01 5 profits? And on the other side of that, once you have  
6 earned your living, once you've earned your money, how do  
7 you turn around and spend that. If you're a person spending  
8 it on food clothing shelter transportation recreation  
9 medicine. If you're a business, how much do you spend to  
14:48:18 10 run the business, what it should cost of goods sold, what  
11 are your inventories, what are -- where does your money go  
12 and how much is left over and by the way, it all goes  
13 somewhere because there is only one thing to do with money.  
14 You spend it. That's the only thing you can do with money.  
14:48:39 15 Even if you use it to buy assets, you got to spend it. If  
16 you tuck it under the mattress, does you no good at all.  
17 I've got to buy something with your Monday I so whether  
18 you're a person or a business or a partnership or  
19 corporation, you take in monies from your economic activity  
14:48:56 20 and turn around and you disburse those monies for your  
21 economic activity economist is a social scientist that look  
22 at that and see what are the relationships, what are the  
23 determining factors in that.

24 **Q.** And are you prepared today to explain to the jury what  
14:49:12 25 you did and tell us what your economic loss calculation was



Burke - Direct

1 in terms of dollars lost to Groeneveld in connection with  
2 the sales that went to Lubecore instead of Groeneveld in the  
3 past and then going forward?

4 **A.** Yes, ma'am.

14:49:27 5 **Q.** Now, have you testified in court on these sorts of  
6 matters before?

7 **A.** Yes, I have, on many occasions.

8 **Q.** And any particular side you usually show up for or how  
9 does that work?

14:49:42 10 **A.** I -- usually I testify on behalf of the plaintiff.  
11 They're the ones who have the responsibility of showing that  
12 there's been a loss. However, frequently, I will testify  
13 for the Defendant also, and on several occasions, I've also  
14 testified for the Court. I've been appointed as a  
14:50:02 15 court-appointed expert. One case involved -- there was a  
16 night club down in Kentucky called the Beverly Hills supper  
17 club, burned down about 30 years ago, and 286 people were  
18 killed or injured. Federal Judge Rubin in Cincinnati asked  
19 my partner and myself if we would undertake an economics  
14:50:25 20 analysis how much the 286 people could have earned had they  
21 not been killed or injured. In another instance, another  
22 federal Judge in bankruptcy court in Cincinnati, there was a  
23 business called eagle pitch which was one of the asbestos  
24 type companies, the Judge asked us to look at the -- what he  
14:50:44 25 called the futures, these were the people who would come

Burke - Direct

1 down with one of the asbestos diseases, ten, 20, 30 years  
2 into the future and what would be the cost associated with  
3 helping them.

4 Another case involved a train that tipped over, a  
14:51:02 5 train tipped over and a lot of gases of some kind came out  
6 of the train and they evacuated a couple counties in south  
7 Western Ohio, Miami County and I forget the other one.  
8 Putnam maybe, I forget and again, these businesses were  
9 closed down for about three days, and the Judge asked us to  
14:51:20 10 look at the economic impact so I worked for the courts and  
11 several occasions also. But economics is economics, I mean  
12 if you ask me how much is two and two or if you are  
13 colleague asked me how much is two or two or the Judge asked  
14 me two or two the answer is the same.

14:51:35 15 **Q.** And sir, when you do this kind of work, this expert  
16 work that you described, are you compensated for the time  
17 that you spend?

18 **A.** That's the first law of economics, nothing's free.  
19 Yes, I am compensated. And very nicely by the way.

14:51:51 20 **Q.** And are you being compensated in connection with this  
21 case as well?

22 **A.** Yes, ma'am.

23 **Q.** And?

24 **A.** I will send you a bill.

14:51:58 25 **Q.** I'll send -- I'll tell you who to send it to, not me.

Burke - Direct

1 And what -- what rate are you being charging here?

2 **A.** For testimony for courtroom testimony, I sent you a  
3 letter I believe and I said I'd charge you \$1200 to come to  
4 court and testify on your behalf. Also in that letter, I  
14:52:19 5 said when I back in my office working on my reports I'm  
6 going to charge you \$475 an hour.

7 **Q.** Okay. And about how many hours do you have of work  
8 into this matter up until coming to court today?

9 **A.** I don't know, and I don't know how many hours my  
14:52:34 10 assistants had in it either.

11 **Q.** Sir, so can you just explain to the jury what you did  
12 to calculate the economic losses in this matter?

13 **A.** Yes.

14 **Q.** Groeneveld's economic losses in this matter?

14:52:53 15 **A.** I noticed an easel here. Can I use that ease will.

16 **Q.** Yes we brought it for you.

17 THE WITNESS: May I, your Honor.

18 THE COURT: Sure.

19 **Q.** Okay, Doctor?

14:53:48 20 **A.** Thank you.

21 The assignment is to figure out how much of  
22 Groeneveld's revenues, I go through an impact the bottom  
23 line. And impact their costs. Well, there's a couple of  
24 simple formulas you want to look at. It is a definition  
14:54:09 25 that total revenue is equal to total costs plus or minus

Burke - Direct

1 profit, and I put plus or minus because it doesn't always  
2 work out the way you want it to. Sometimes profits are  
3 negative.

4 That's a formula that has to hold true.

14:54:32 5 MS. MICHELSON: Help is on the way.

6 THE WITNESS: That has to be true. It's a  
7 definition.

8 Now, the question I don't look at is if there's a  
9 change in revenue, if there's a dollar more of sales,  
14:54:46 10 \$10,000 or \$100,000 or \$1 million or \$10 million more in  
11 sales, what impact will it have on this company. Well, so  
12 it's a change in revenue is going to be a change in total  
13 costs plus or minus a change in profit. Well, it cost here,  
14 there are two components every cost. There are fixed costs,  
14:55:08 15 and there are variable costs. Fixed costs are costs that  
16 you shot run don't change. If you own a building, and your  
17 accountant told you it appreciates by \$60,000 per year, then  
18 whether you produce one item in that building, or a million  
19 items in that building, the appreciation is \$60,000, that's  
14:55:32 20 a fixed cost.

21 There are other costs that are variable costs. If you  
22 run the plant 24 hours a day, your electrical bill is  
23 probably going to go up. If you have more laborers, then  
24 the labor bill will go up and the payroll taxes associated  
14:55:48 25 with that.

Burke - Direct

1 If -- so I want to divide the cost right here into two  
2 types, fixed costs and variable costs. So now my formula is  
3 total revenue is equal to fixed costs plus variable costs  
4 plus or minus profit.

14:56:08 5 That's all I have to figure out because now, I have to  
6 collect data. I have to collect data on what this total  
7 revenue has been, and so you look back historical look at  
8 profit areas profit and loss statement, a profit and loss  
9 statement will tell you the revenue and you look at that for  
14:56:28 10 over a period of years, the profit and loss statement is  
11 also going to tell you all of the costs associated with this  
12 company, and that profit and loss statement is going to tell  
13 you the profit. Positive, negative, zero.

14 I need help right here. Some fixed costs are all as I  
14:56:47 15 mentioned appreciation is August if you had borrowed a  
16 \$million at the bank at 10 percent you open \$100,000 a year  
17 and you produce one are a million, that's a fixed costs.  
18 (Fixed) some fixed costs are obvious, some fixed costs are  
19 not obvious. I need help from the company to make this  
14:57:09 20 determining and what you do is take all these numbers, you  
21 put it in, my next step is I want to find out what is the  
22 relationship between this total revenue, fixed costs is  
23 going to be constant, so I really want to find out what is  
24 the relationship between fixed costs, and variable costs.

14:57:29 25 Variable costs doesn't stay with the company, variable

Burke - Direct

1 flows right out the door you don't get to keep the variable  
2 costs so I go back and I collect data on the company, I  
3 collected five or six years of information on revenue,  
4 collect the information on five or six years of all of the  
14:57:46 5 costs associated with this company, and then I take all that  
6 information and I put it into statistical regression. I try  
7 to determine what is the relationship, in a regression is a  
8 mathematical formula that tells me what the relationship is.

9 Just for example, you may put on this axis a number of  
14:58:09 10 cigarettes smoked you may put on this axis the rate of lung  
11 cancer or something else, and when you go out and collect  
12 the data, you're going to find that the data looks like  
13 this. It's all over the place, the data here there  
14 everywhere, it is -- you've got -- you know, you got  
14:58:28 15 somebody smoked one pack of cigarettes, cancer, and almost  
16 everybody who smoked camels and lived until 86. But, when  
17 you collect all of the data, put it through a mathematical  
18 relation ship, called the regression analysis you find that  
19 here is a trend line and that trend line will say for each  
14:58:53 20 one more pack of cigarettes you smoke on average, the cancer  
21 rate jumps from here to here and it's -- by the way that's a  
22 mathematical relationship, it's not a causal relationship  
23 just math.

24 This line has to fit two categories, one you notice  
14:59:15 25 there are numbers above the line numbers below the lines

Burke - Direct

1 numbers below, if I sum all of those deviations from the  
2 trend line, some of that has to be zero. That's what an  
3 average is, isn't it? An average -- you have some above,  
4 some below, all deviation s are zero. This line has enough  
14:59:38 5 characteristics in which -- because some of the deviations  
6 are above the line, some of the deviations are below the  
7 line, negative. If I square them, get rid of the negative  
8 so the second characteristic, this has to be the least or  
9 the smallest of the squared numbers and that's why this line  
15:00:01 10 is called the line of least. I put that through my  
11 regression. I did that for this company, and I found when I  
12 put through all the numbers that the relationship it turned  
13 out to be that it changed in total revenue most of it was  
14 going to disappear in the form of fixed costs. Aim going  
15:00:25 15 round this out roughly 65 percent is going to disappear in  
16 fixed costs -- excuse me in variable costs and approximately  
17 35 percent was going to stay in the form of contribution to  
18 the bottom line profit and to help pay for fixed costs.  
19 Actually the number I got from my regression was 36.53  
15:00:54 20 percent. So put a dollar in at the top of the company to a  
21 revenue, then the company is going to benefit to the tune of  
22 36 and a half cents. A billion dollars in and it's going to  
23 benefit to the tune of 365,000 and some odd pen nice.

24 So that's the first half of my assignment. The other  
15:01:20 25 half of my assignment was to look at a variety of sales that

Burke - Direct

1 had been undertaken by a different company, in this case  
2 Lubecore. I had information sent to me from the attorneys  
3 that in the year of 2010, that the portion of the sales that  
4 would have affected the Groeneveld was \$816,617, and in  
15:01:56 5 2011, the annual projected amount was \$1.6 -- \$1,633,235 I  
6 then applied my 36.5 percent, and I got the damages at  
7 Groeneveld had suffered for the first couple of years, were  
8 about \$298,000 for this year and about \$894,000 in the  
9 second year. That brought plea up to now. I then turned my  
15:02:43 10 attention to the future. In the future I've got three other  
11 problems I have to deal with. One problem I had I have to  
12 deal with is growth. Sales of Groeneveld going to grow in  
13 the future? Well, I looked back at the producer price index  
14 for this type of industry, and I thought that the growth of  
15:03:07 15 prices, assuming though growth in form, the growth of prices  
16 was going to be about 3.6 percent per annum so I assumed  
17 that Groeneveld's gross revenues was going to grow by that  
18 change in prices. Change in prices by the way comes out of  
19 the producer price index, I looked at the producer price  
15:03:30 20 index between 2003 and up through August of 2011, and this  
21 averaged 3.6 percent, some more, some less as to average.

22 The second problem I have is if there is money due and  
23 payable in the future, like if I owe you \$1 million, next  
24 year.

15:03:52 25 Q. You can send that to me along with the bill?



Burke - Direct

1 (Laughter.)

2 Q. But if I owe you -- \$1 million next year, and I went  
3 up to her today and said I'd like to get out of my debt  
4 today, I don't want to offer her a \$1 million because I'm  
15:04:11 5 overpaying her. She can take my million and just out of any  
6 bank and earn a small amount in today's world but earn 1  
7 percent on that.

8 Now, 1 percent on a million is what, \$10,000, so I  
9 think I'll say to her would you like to have \$990,000 today  
15:04:31 10 or do you want to wait a year and I'll give you the \$1  
11 million. The economist is going to say those two amounts  
12 one year time period at 1 percent interest are the same  
13 amount.

14 If the debt is owed two years from now and there's two  
15:04:50 15 years, not only \$10,000 a year but compounding in there too  
16 and if it's three years, if it's four years, five years, so  
17 for each year in the future, I have to bring it back to  
18 present value. What it's worth today.

19 Now, usually when you look at present value for a debt  
15:05:09 20 between two people like you and me, you look at a safe  
21 investment, you look at a safe investment like the United  
22 States Government, that's the safe investment (bond) and  
23 that interest rate today is very low, .6 of 1 percent, even  
24 for two or three or four years, it only gets up to 2 or 3 or  
15:05:28 25 4 percent. However, we're looking at a business. A

Burke - Direct

1 business is subject to a lot more risk than the United  
2 States Government is. It's just not as safe an investment.  
3 So the rate of interest that I use to bring 2012 back to  
4 today, 2013 back today 2014 back to today I use 20 percent  
15:05:52 5 and that accounts not only for that rate of interest, it  
6 accounts for risk, risk of bankruptcy, risk of recession,  
7 all kinds of risks. All used very high rate.

8 Third thing I have to look at is is this problem that  
9 Groeneveld has encountered, is it going to go on forever, or  
15:06:14 10 is it going to end today or is it going to end a year or  
11 two, three, four five years from now, well, I looked at  
12 several years in the future, and I was in have had that the  
13 problem would probably disappear in about the fifth year.  
14 So for the next several years, I have to say how much is  
15:06:35 15 Groeneveld going to lose in the future before the problem  
16 totally goes away. So as I mentioned, maybe if you just put  
17 up Page 10 of my report?

18 MS. MICHELSON: I got it here, sir. 10 or.

19 THE WITNESS: Ten, Page 10.

15:07:22 20 There we are, so in the -- I started in 2010, I did  
21 not have Lubecore's figures for 2009, so I made no judgment  
22 on that.

23 But in 2010, I thought the lost sales would be  
24 \$816,000, the contribution margin would be 36.53 therefore,  
15:07:46 25 Groeneveld has lost \$298,000 to pay profits and other fixed

Burke - Direct

1 costs. The next year I thought Groeneveld would have lost  
2 about \$1,633,000 in sales, applied the 35 percent, and you  
3 get \$596,000 in lost contribution margin, add those two  
4 together and the problem ends right now in 2011, the losses  
15:08:16 5 would be \$894,000.

6 If it continues for five years, you could see the year  
7 figure, first of all, in the first column, you can see sales  
8 dropping very rapidly. I have them dropping very rapidly  
9 because I grew them by the small amount, only price  
15:08:36 10 increases of 3.6 percent. No -- no additional quantity.  
11 And I discounted them at a very high rate of interest.

12 And that's what you get for result of those figures  
13 dropping 1.4, 1.2, 1.0, 9, 7, 6, and drop very rapidly  
14 mostly because of the high discount rate, and if you add  
15:08:59 15 them up until the fifth year, I have cumulative chart off to  
16 the very far right here, there, accumulator, if you -- if  
17 the problem ends in fifth year, the total losses \$2  
18 ,856,326. I put all of this in a report. And I sent it off  
19 to you.

15:09:19 20 **Q.** Okay, Doctor. Thanks. You are here' my question for  
21 you. The first question when you did your first part of  
22 your Saturdays call regression analysis, what is the data  
23 that you need and did you get it?

24 **A.** Yes, if I didn't get it I could not have done that.

15:09:41 25 I asked for statistical data for at least five years.

Burke - Direct

1 I like to have five years.

2 Q. How much did you get?

3 A. I got 6, 2005, 6, 7, 8, 9 and 10, and I have the  
4 revenue data, and I had all the cost data.

15:09:57 5 Q. And that data was whose data?

6 A. Groeneveld's data.

7 Q. And do you recall it being provided to you in a CD?

8 A. Yes. I got it in an electronic form, I got a couple  
9 of disks here, I got it in electronic form, the easiest way  
15:10:17 10 to transmit it but it's standard accounting stuff. A profit  
11 and loss statement from a company.

12 Q. And were you provided with all the information from  
13 Groeneveld that you felt you needed to reasonably calculate  
14 the -- to do your regression analysis?

15:10:33 15 THE COURT: Doctor, you can sit back down if  
16 you want, you can sit back down.

17 THE WITNESS: Thank you.

18 THE COURT: If you're more comfortable  
19 whichever way you want to do.

15:10:44 20 THE WITNESS: Thank you, your Honor.

21 I did get all the information I need, you provided me  
22 with an opportunity to talk to -- on the phone to people  
23 from Groeneveld, and I especially needed some help as I  
24 always do in that area, separating out what is fixed costs,  
15:10:58 25 what is variable costs, not always easy to identify.

Burke - Direct

1 Q. Why -- why do you need input from the business people  
2 on that specific topic?

3 A. I will never know their business as well as they know  
4 their business. So I need help in having some things  
15:11:17 5 explained to me.

6 The relationship between economics and business, the  
7 economist is kind of a business person scientist. It's kind  
8 of analogous to the relationship between engineering and  
9 physics. And so now we're into the practical nitty-gritty,  
15:11:37 10 I need help from somebody in the company to explain to me  
11 just -- as I said some fixed costs are obvious, some are  
12 not.

13 Q. Was there anything in the Groeneveld financial data  
14 and information that was delivered to you that raise any  
15:11:56 15 concerns about reliability or accuracy or anything along  
16 those lines?

17 A. I'm not a CPA, I'm not an accountant and am certainly  
18 not an auditor. I accepted what you told me as truthful.  
19 I'm -- I'm one of those people who believes lawyers.

15:12:14 20 Q. And?

21 THE COURT: You should. His wife is a lawyer.

22 (Laughter.)

23 THE WITNESS: Yeah, I better.

24 Q. And then when you did your other part of the  
15:12:24 25 calculation, did you accept as accurate the information that

Burke - Direct

1 the Lubecore lawyers provided concerning Lubecore's sales  
2 numbers?

3 **A.** Yes, ma'am. You provided me with a document that has  
4 got a reference number of Lubecore 0000, five zeroes, 296  
15:12:50 5 and I relied on that document.

6 **Q.** And just so -- just so the record is clear, that's --  
7 is that this item that we have here, is it 103? If you need  
8 me to walk you up a copy, I can.

9 **A.** Yes.

15:13:15 10 **Q.** Now, were there any 2009 numbers identified here?

11 **A.** No, ma'am. This at the top says 2010 actual, and 2011  
12 projected.

13 **Q.** Okay. And -- oh, that's here. And when you -- and  
14 when you inserted the Lubecore sales figures into your  
15:13:39 15 analysis to come out with a numbers that you've testified  
16 to, the damage numbers that you've testified to, did you  
17 include all of the figures here in Exhibit 103 or was there  
18 a selection?

19 **A.** It was a selection. I was informed by you and your  
15:13:59 20 colleagues that there were just four items to look at. As  
21 you noticed, the total sales in 2010 listed as a million 42.  
22 I only used 816,000 of those one million, 42, about 80  
23 percent and I used the company c, the company identified  
24 here as C, I used the company that was identified as I, J  
15:14:28 25 and K, I used four companies.

Burke - Direct

1 Q. And, sir, so if in fact additional companies should  
2 have been included, your final calculations would be greater  
3 in terms of the actual lost profit damages, lost sales  
4 damages?

15:14:48

5 A. Yes, a company that I didn't include by the way was  
6 the first one, and that had sales of about 26,000. If you  
7 added that to my figure, you should then take .365 of that,  
8 and about a third of that would be about eight and a half  
9 thousand and add that to the losses, yes.

15:15:10

10 Q. And why did you -- what part of your calculation  
11 includes Lubecore's reported gross revenues for the selected  
12 companies that you've identified in court here?

15:15:37

13 A. That would be in my report where I talk about there's  
14 a footnote on Page 9 where I say I have added \$816,000 and  
15 \$1,633,000. The four companies for 2010 and 2011, that's on  
16 Page 9 of my report.

17 Q. I'm trying to get to that. That's marked PX 117- 1.  
18 It's so hard to see.

15:16:01

19 A. Kind of hard to see but if you can pull up footnote C  
20 says I've added \$816,000 for the first year, and \$1,633,000  
21 respectively for the second year. So that would be 2010 and  
22 2011.

23 Q. I'm not sure if I have the right table. Can you tell  
24 me which table?

15:16:23

25 A. I think you were right.

Burke - Direct

1 Q. Oh, I was -- okay?

2 A. Yeah. Look at Note C.

3 Q. Oh, I see here. Okay. Thank you.

4 A. I added \$816,000 for 2010 and \$1,633,000 for 2011.

15:16:39 5 You had the right one.

6 Q. Okay, great.

7 What other information did you use, one other data did

8 you use in doing all these calculations that you've

9 described to come up with the numbers that you're presenting

15:16:53 10 here in court?

11 A. I think we talked about all the data I used. I

12 brought everything -- I brought my complete file with me,

13 and that's all the data I used.

14 Q. And, sir, did you have access before today to this

15:17:12 15 document marked Defendant's Exhibit X? Let me find it in my

16 stacks. Maybe somebody over there has got some -- got that

17 handy for me? Thank you.

18 Is this something you were provided access to before

19 today?

15:17:38 20 A. I saw that earlier today. I don't believe I was

21 provided access to that first sheet you had. I was provided

22 with a second disc of information on Friday of last week,

23 Thursday or Friday of last week and I started going through

24 that. Perhaps that document is in there.

15:18:01 25 Q. Okay. And you got that disk when? I missed it?



Burke - Direct

1     **A.**     Today, I got -- I saw the document today. I got the  
2     disk late last week and that document may be in had a disk.  
3     I haven't seen it yet from that disk.

15:18:17

4     **Q.**     How much information is on that -- provided that disk  
5     that you got, I guess, Friday?

6     **A.**     Say again.

7     **Q.**     What's the volume of the data in that new disk that  
8     you were provided?

9     **A.**     A disk full.

15:18:30

10           (Laughter.)

11    **Q.**     And, sir, I'm going to show you this page from your  
12    report that we've marked Exhibit 10 9, and can you just tell  
13    the jury what this slows?

15:18:52

14    **A.**     Yes. Until today I did not know how long in the  
15    future this problem might exist for Groeneveld so on the  
16    next page, 2-A, I show every year, and on this page, I kind  
17    of show a summary.

15:19:13

18           So if the problem ends this year, if by the end of  
19    December, no more problem than then the loss toss Groeneveld  
20    would be the top figure \$894,000.

21    **Q.**     Plus whatever numbers are relevant to the 2009 sales?

22    **A.**     Right, I did not have 2009. So this is 2010 and 2011.  
23    If the problem continues on for another three years, then  
24    the amount of damages over that period of time, I believe,  
15:19:34 25    would be \$2.2 million and if the problem continues for a

Burke - Direct

1 five-year time period, it would be \$2.8 million.

2 **Q.** And I want to make sure this is clear. In your  
3 calculations, you are -- your economic analysis and re  
4 regression analysis and statistical formulas, do you account  
15:20:04 5 for variables, certain variables?

6 **A.** Oh, yes, that's -- that's why you use those  
7 statistical regression because accounts for all of that.  
8 Sales don't go up perfectly in a straight line. They go up  
9 and down up and down and up and down and cost.

15:20:19 10 Costs don't rise or false. They go up and down and up  
11 and down and that's what the regression does. It takes into  
12 consideration all of those ups and downs and ups and downs  
13 and gives us the line.

14 **Q.** And from this page in your report, this figure or  
15:20:38 15 summary sheet, we've marked it Exhibit 110. I saw that  
16 flying around up there in your hand and I thought maybe you  
17 could describe for the jury what this particular figure  
18 shows?

19 **A.** Yes.

15:20:50 20 On the upper pad if you could pull that up a little  
21 (part) .

22 **Q.** I can. I can try. Is this good enough or you want me  
23 to --

24 **A.** That's nice. First off in the first column, the left  
15:21:02 25 I show the years that I looked at it. I started in 2010,

Burke - Direct

1 and 2011, that's the data I had from Lubecore.

2 So 2012, 13, 14, are forecasts I made of Groeneveld's  
3 additional sales because the second column says lost gross  
4 sales. The third column I look at the variable costs. And  
15:21:25 5 I'm going to round that off to two-thirds, 67 percent. And  
6 then the next column has got the contribution margin at  
7 about 35 percent. And the next column has the lost sales  
8 accumulated so it takes year one, it adds year 2, years 3,  
9 adds year 4, second to the last column is the variable costs  
15:21:50 10 accumulator and the last column is the contribution margin  
11 accumulator so if the problem ends right now in 2011, you  
12 would add 2010 and 2011 together, and get the figure that we  
13 just looked at.

14 Q. 894?

15:22:07 15 A. 894, yes. If.

16 Q. Plus the 2009 sales, I want to make sure we're  
17 accurate on that?

18 A. Yes.

19 Q. Okay.

15:22:16 20 And continue on. I interrupted.

21 A. No, that is -- yeah, plus the 2009, which I didn't do  
22 anything with.

23 Q. Right?

24 A. And then we Justin on the line. If we go on for  
15:22:29 25 another year, another year, another year, another year, it

Burke - Direct

1 all adds up.

2 **Q.** And this --

3 **A.** Oh, and at the bottom. Page if you can keep that same  
4 page there, that just kind of shows it in a graphic form  
15:22:44 5 over a period of time. Same data, same information, but now  
6 a picture.

7 **Q.** And now this table that was in your report, table 1,  
8 what is-- what is this data?

9 **A.** This is the profit and loss sales grown for the period  
15:23:09 10 of time 2005 to 2010, up at the top it shows the gross  
11 sales, gross profit, it shows all of the costs associated  
12 with that so, therefore we get down to the total operating  
13 costs and the net sales margin, and then we get into the  
14 management fees, and income from other things, and then we  
15:23:25 15 get into net result after tax in the first several years  
16 they were profitable, in the last few years, they turned  
17 negative.

18 **Q.** Here, this table 4, we marked it PX-114, if you could  
19 identify and describe the meaning of this item?

15:23:47 20 **A.** Yes, there takes the figures we just looked at in the  
21 first column, gross sales for 05, '06, 2007 et cetera and I  
22 report them, and I say, there comes back to that formula,  
23 total revenue is equal to costs, plus, and so here I have in  
24 the next column the fixed expenses of the costs of running  
15:24:09 25 this company, how much of those costs got fixed?

Burke - Direct

1 By the way fixed is kind of a in the short run, this  
2 instant, everything's fixed. You can't change a thing right  
3 now. So by definition, everything is fixed. But, in the  
4 long run, everything is variable because the long run is the  
15:24:36 5 long enough period of time to change everything. So I'm  
6 looking here at the short run. So in the short run, the  
7 next column, I have those fixed expenses. That -- and I  
8 also have the ordinary income. Those statements come right  
9 off the statements of profit and loss that we just looked at  
15:24:57 10 on the previous page. Therefore, the last column is the  
11 residual mixed and variable expense because some expenses  
12 are clearly fixed, some expenses are clearly variable, and  
13 some expenses you're not quite sure about. So I put them  
14 into this category column, mixed.

15:25:18 15 **Q.** And those -- those contingencies and those variations,  
16 are three all worked into your economic and statistical  
17 assessments and calculations?

18 **A.** Yes. And the reason I'm doing this is to put them  
19 into my regression. I have to make one other change, which  
15:25:34 20 is on the next page, Page 7.

21 **Q.** Do you have a table number?

22 **A.** Table 5, Page 7.

23 **Q.** And that is Exhibit 1 (15) Plaintiff's Exhibit 115?

24 **A.** Yes, right there. To get my regression to work  
15:25:58 25 mathematically and give us a good figure, you got to take

Burke - Direct

1 inflation out of the equation, you don't want to be having  
2 the variation, just do the prices.

3 So here, I put in the consumer price index, to stand  
4 measure of inflation and I adjust all of my figures. So  
15:26:18 5 they're now in constant dollars. That's a step I must take  
6 in order to run the regression, which is on the next page,  
7 Page 8?

8 **Q.** Table 6. I'm organized by table numbers?

9 **A.** Table 6.

15:26:35 10 **Q.** Here we go. We've marked that PX 116-1?

11 **A.** Could you bring it up a little, please?

12 **Q.** I can. I can try anyway.

13 **A.** There's my regression analysis. You can look at that  
14 first number where it says multiple R and R square. If it  
15:27:00 15 was a perfect fit, the number there would be 100 or 1. But  
16 it isn't a perfect fit so the number is only .98. That's a  
17 pretty good fit though and there I have the other  
18 regressions. Down below I have my co-efficient, that line I  
19 puts on the board is going to cross the Y axis at some point  
15:27:23 20 and it's going to have a slope, and there they are right  
21 there. The last two things, the T statistics and the P  
22 value tell me if my data is statistically significant, and  
23 it is.

24 And then right in the middle of that page, you can see  
15:27:37 25 there is the contribution margin 36.53.

Burke - Direct

1 Q. Now, would have we've heard testimony from Ms. Wilson.  
2 She's the CFO of the company, and she did her own  
3 calculations and came up with the contribution margin of  
4 around 40 percent. I don't know the exact figure right now.  
15:27:57 5 Can you explain the reasons for that variation?

6 A. Perhaps. Did we look at the same years? Did she have  
7 the same six years that I looked at?

8 Q. I believe that she testified about three years.

9 A. Well, right there, you would expect a difference  
15:28:13 10 because we looked at different data.

11 And also you could expect a difference because I went  
12 through this process of separating out the variable, the  
13 fixed and the mixed. I don't know if she used that same  
14 procedure or not. But, if you came in and said to me Burke,  
15:28:32 15 I heard from Albert Einstein and he said that the number you  
16 used was 36, and it really should have been 40, aid say I'll  
17 accept what Albert says. It's within the range. My  
18 number's not perfect. Could it be 37, could it be 35, could  
19 it be 38? Yes, it could be. It's an average. And average  
15:28:52 20 is before, and averages have below.

21 Q. And so it is the difference between say 36.53 percent  
22 and the 40 percent statistically meaningful?

23 A. I don't think so, but I'd like to run it through a  
24 statistical test to see it. It doesn't seem to me, but  
15:29:11 25 again, I'd like to run it through a statistical test. There

Burke - Direct

1 are statistical tests that compare this number with that  
2 number and see if the difference between them is significant.  
3 You know how all the polls come out on the president and  
4 they say the president's approval rating is what? It's 20  
15:29:29 5 plus or minus 3, that means it could be 23, could be 17. My  
6 numbers are the same way. Statistics are not perfect,  
7 they're above and they're below. 40 is close enough. But,  
8 I know what I did, I don't know what she did. And I like my  
9 method.

15:29:49 10 **Q.** I'm going to show you now --

11 THE COURT: Here let's take a short recess.  
12 Okay? Take about ten or fifteen minutes, folks. Keep in  
13 mind the admonition.

14 (Thereupon, a recess was taken.)

15:45:25 15 **Q.** Hi, Doctor Burke, I'm going to be done pretty quickly.  
16 I'm going to just show you now as we move through this, as I  
17 said fairly quickly, if we could switch over to this Elmo.

18 THE COURT: Let's see here.

19 MS. MICHELSON: Thank you, your Honor.

15:45:51 20 **Q.** Figure 4 of your report that we marked as PX-124, and  
21 if you can just explain what this -- what this graph  
22 depicts?

23 **A.** Yes. That is in units, that's not in dollars. That  
24 the -- left hand axis is in units and that's truck sales,  
15:46:17 25 audit, audits for trucks.



Burke - Direct

1 Q. On an annual basis?

2 A. On an annual bases, starting in 2008, they dipped in  
3 '082009, that's the impact of a recession, recovered in  
4 2010, and they're expect today recover very nicely in 2011.

15:46:33 5 Q. And this -- this Figure 1 that appears in your report,  
6 we marked this Plaintiff's Exhibit 121. If you can explain  
7 to the jury what this depicts and where this fits in to your  
8 opinion?

9 A. Yes, these are Groeneveld's actual sales for the time  
15:46:56 10 period 2005 to 2010, and they show both the total U.S.,  
11 which is the red figure, and they show Ohio.

12 Q. And then finally, Doctor Burke, finally, as to these  
13 figures, in any event, figure 2 that we've marked as PX-122,  
14 can you tell the jury what this figure depicts, and what the  
15:47:25 15 relevance is of this item?

16 A. Yes. These show what would have happened to  
17 Groeneveld sales if we had added the Lubecore sales to  
18 Groeneveld. So here, we see Groeneveld sales, and then  
19 adding in 2010, and 2011, the Groeneveld sales to the  
15:47:46 20 Lubecore in both the United States as a whole, and the Ohio  
21 component.

22 Q. And this Figure 2, it depicts what period of time?

23 A. 2005 to 2011, although the Groeneveld sales plus the  
24 Lubecore sales are only for 2010 and 2011. I didn't have  
15:48:09 25 2009, we don't know what 2012 is going to be.

Burke - Direct

1 Q. I see. I see and just so the record is clear, the  
2 pink line, that is the Groeneveld -- that's the Groeneveld  
3 sales in Ohio?

4 A. In Ohio, yes.

15:48:27 5 Q. And the yellow line adds in the Lubecore sales for  
6 total Groeneveld USA?

7 A. Yes, so the yellow line is USA, the first part of it,  
8 the first four or five dots, just Groeneveld, the second two  
9 dots, 2010, and 2011 add Lubecore to Groeneveld.

15:48:47 10 In the red line, it's just Groeneveld. In Ohio, and  
11 that's the first four or five red dots, and then in the last  
12 two dots for 2010 and 2011, I add those portions of Lubecore  
13 sales which were applicable. Not total Lubecore sales, just  
14 the four companies that I looked at which I showed the jury  
15 already.

16 Q. Just so I'm clear, the figure 2, it includes the  
17 Lubecore sales as Lubecore reports for 2010 and 2011, but  
18 not 2009 and before that because you didn't have that  
19 information?

15:49:25 20 A. You are correct.

21 Q. Okay. Now, Doctor, I'd like you to assume, as to  
22 these 2009 sales I'd like you to assume please the  
23 Groeneveld has sales of an additional 200 units, meaning an  
24 additional 200 ALS EP-0 systems, as reported by the  
15:50:01 25 Defendant, and that each one of those additional units would

Burke - Direct

1 have brought in a 1500 price I would like you to then tell  
2 us first what the additional gross revenue to Groeneveld  
3 would have been if it had had those sales in 2009.

4 **A.** Well, 200 units times \$1500 is \$300,000.

15:50:29 5 **Q.** And then if you apply your contribution margin as you  
6 determine the contribution margin to be based on the  
7 statistical regression analysis that you described, what  
8 loss sales damages you calculate in 2009?

9 **A.** If you had additional sales of \$300,000 and the  
15:50:56 10 contribution margin was .3653, then the amount that would  
11 have been added to your bottom line and to help you pay the  
12 fixed costs would be \$109,590.

13 **Q.** Okay.

14 And that -- let me see if I can find it. I can use  
15:51:32 15 this one. And that is in addition to -- I'm looking now at  
16 PX-118-1. That would be in addition to the \$894,904, that  
17 you calculated as present value, incurred loss net sales in  
18 2009, 2010, and through today, 2011?

19 **A.** Yes, if you added that 109 to the 894,904, you'd get  
15:52:10 20 \$1,004,494, 1,004,494.

21 **Q.** Okay.

22 MS. MICHELSON: Thank you, Doctor. I don't  
23 have any further questions of the witness at this time.

24 THE COURT: Thank you. Cross-examination.

15:52:27 25

Burke - Cross

## CROSS-EXAMINATION OF JOHN BURKE

BY MR. ANASTOS:

9. Good afternoon, Dr. Burke. How are you?

**A.** I'm well today. And yourself?

Q. Very well.

**A.** Good. Nice to see you.

Q. I've been practicing in Ohio for over 20 years and have heard of you for those 20 years and actually pleased to have a chance to meet you?

**A.**     Aim pleased to meet you too.

Q. I'm Tom Anastos?

**A.** Yes you're with Ulmer and Berne, correct.

Q. Yes?

**A.** I am I've known your firm for a long, long time.

Q. Now I was confused about how much you're getting paid to sit up there right now, per hour?

A. Well to testify, I send people a letter and I say for testimony, for that day of testimony, I will charge you \$1200 to appear in court. When I'm back at my office working, I will charge for my time \$475 per hour, and then I have a lot of help from very able bodied people and I charge them at appropriate amounts too.

Q. Speaking of which, how many people helped you on this -- up on this -- preparing this report, preparing this data?

Burke - Cross

1       **A.**     Well, in a narrow sense, there are six people at my  
2       firm and I think four of them maybe five had input at some  
3       point in time. That's the narrow answer. The big answer is  
4       all of those teachers who taught me in the first grade and  
15:54:07 5       the second grade and in college I oh, all of them.

6       **Q.**     I didn't ask about them I was asking about the people?

7       **A.**

8                       (Laughter.)

9       **Q.**     Because you don't charge the client for the --

15:54:17 10       **A.**     No, I don't, but those -- those the people that I  
11       really owe.

12       **Q.**     And how much have you charged the plaintiff in this  
13       case?

14       **A.**     I don't think we've sent them a bill yet. As a matter  
15:54:29 15       of fact, I was looking through my report this past weekend,  
16       and I have a green sheet, I stand corrected. We billed them  
17       \$24,150 the end of September.

18       **Q.**     And that was for time through the end of September or  
19       through the end of August?

15:54:45 20       **A.**     Through the end of September, I think that bill has a  
21       date on it of 9-27.

22       **Q.**     Great. What I'm asking is a lot of bill 30 days in  
23       advance. So is that bill that was for 30 days after the  
24       work has been completed, if that bill is dated 9-27, is that  
15:55:03 25       for work done through August 31st or through sometime in

Burke - Cross

1 September?

2 **A.** That is through 9-27. That's the way I bill.

3 **Q.** And how much was that again?

4 **A.** \$24,150.

15:55:16 5 **Q.** How many hours would you estimate you put in since  
6 September 27th?

7 **A.** Maybe another ten, I worked a couple of hours this  
8 past Sunday. I met with the attorneys on Sunday, met a  
9 couple of hours then, math and rose an and I worked on this  
15:55:39 10 case Thursday and Friday of last year.

11 **Q.** So you personally put in about ten?

12 **A.** That's a guess. I have to go back and look at my  
13 records.

14 **Q.** Is that would add another \$5,000 on?

15:55:48 15 **A.** Approximately, yes, sir.

16 **Q.** So now we're up to close to \$30,000?

17 **A.** Yes, sir.

18 **Q.** Okay.

19 You testified that you have testified many, many times  
15:55:59 20 as I think you said, or many times, was there only one many?

21 **A.** Say again.

22 **Q.** How many times did you say many when you testified?

23 **A.** I don't think I said but I will say, I didn't keep any  
24 records for the first 25 years I did this but I would  
15:56:16 25 estimate I testified in court 1800, 1900 1700 sometimes.

Burke - Cross

1 First time a lawyer called me it was 1966. I've been doing  
2 this work for a long time.

3 Q. So you've been a damages expert for a living pretty  
4 much?

15:56:32 5 A. That's how I earn most of my living. I charge John  
6 Carroll a dollar a year. So most of my living is earned  
7 working for lawyers.

8 Q. Let's broaden that a little bit. If you testified 17  
9 or 1800 times on the stand, surely you've been deposed more  
10 times than that?

11 A. About that, about another 17 or 1800 times. I tell  
12 people I've told the truth more times than an eye Irish man  
13 should have to.

14 Q. That's lovely colloquy doctor but can you just answer  
15 my questions?

16 A. Yes, sir.

17 Q. Did you say that you were deposed another 17 or 1800  
18 times in addition to the 17 or 1800 times you have testified  
19 in trial?

15:57:14 20 A. I did, and as you probably aware, counselor, several  
21 courts require to you keep a four-year average and I'll be  
22 happy to send you a copy of that four-year testimony if  
23 you'd like.

24 Q. No, I'm just -- just trying to understand apparently  
15:57:29 25 you've been retained as an expert witness in terms of having

Burke - Cross

1 been deposed, X number of times and testified in trial X  
2 number of times. What, at -- 3500 times in your career?

3 **A.** Testifying in court or in arbitrations or in hearings,  
4 someplace where I've been put under oath, yes, sir.

15:57:48 5 **Q.** Approximately 3500?

6 **A.** That's a good guess, yes, sir. I didn't keep any  
7 records for the first many years I did this.

8 **MR. ANASTOS:** Can we switch to the --

9 **Q.** Do you recognize this, Dr. Burke?

15:58:20 10 **A.** I do.

11 **Q.** What is it?

12 **A.** It's a letter I sent.

13 **Q.** First page of your report?

14 **A.** Yes, sir.

15:58:25 15 **Q.** And see this line in yellow here that says our  
16 assumption included that but for Lubecore's action, all  
17 relevant sales by Lubecore would have accrued to the  
18 accounts of Groeneveld Ohio?

19 **A.** I see that.

15:58:43 20 **Q.** Is that the assumption you made in this?

21 **A.** I was asked to make that assumption, yes, sir are, for  
22 the four companies, not all of Lubecore sales but for four  
23 companies.

24 **Q.** Right.

15:58:53 25 **A.** Yes, sir.



Burke - Cross

1 Q. For everyone of those companies, you have assumed that  
2 but for Lubecore's existence, but for its very existence,  
3 those sales would have accrued to Groeneveld?

4 A. Yes, sir, I would phrase it -- I was asked to assume  
15:59:06 5 that.

6 Q. You did assume it, didn't you?

7 A. Well, I was -- there's a slight difference.

8 Q. You were asked to assume it?

9 A. I was asked to assume it, and I accepted that  
15:59:15 10 assumption.

11 Q. Okay?

12 A. Yes, sir.

13 Q. Do you know -- do you have any reason to believe that  
14 that assumption is true?

15:59:21 15 A. Well, I took it as a possible. That's why I said I  
16 was asked to assume. I wasn't there when these things  
17 happened. So somebody had to tell me. I was asked to  
18 assume it, I accepted it.

19 Q. So you don't know one way or another if any of those  
15:59:37 20 sales -- any sale that was made by Lubecore was made as a  
21 result of any customer being confused between a Lubecore  
22 brand and a Groeneveld brand?

23 A. You're right. I wasn't there, I wasn't there in any  
24 one of these sales. I don't know what happened, I didn't  
15:59:52 25 testify about that.

Burke - Cross

1 Q. Okay. So if -- do you know what this case is about?

2 A. In general but I'm not an engineer, I'm not a  
3 lubrication expert. I in general I know, but --

4 Q. Give us the general?

16:00:05 5 A. The general is that there was a product that  
6 lubricates, heavy trucks, big trucks, and it does it  
7 automatically, lubricates) and you install this on the truck  
8 and don't have to worry about lubricating it again not like  
9 the old days I used to get under a car with that lube begun  
16:00:24 10 gun.

11 Q. Colloquy again what's the case about please?

12 A. I understand that somebody took their product, and ran  
13 with it.

14 Q. So you understand that in order for there to be -- to  
16:00:36 15 be any damages here, the sales that Lubecore has made have  
16 to be as a result of the alleged infringing activity,  
17 correct?

18 A. That's not my job.

19 MS. MICHELSON: Objection.

16:00:48 20 THE COURT: Overruled.

21 Q. That's not your job?

22 A. I am not a cause expert. I am not a fact expert on  
23 those matters. I'm a numbers guy, I wasn't there when these  
24 things happened. I can't testify about that.

16:01:00 25 Q. If there is zero evidence in this case that even one

Burke - Cross

1 of Lubecore's sales was made as a result of confusion  
2 between the Lubecore product and the Groeneveld product,  
3 assume that, that there's no evidence of that?

4 **A.** If you assume there's no damages, then there's in  
16:01:21 5 damages.

6 **Q.** I didn't say assume no damages because your number  
7 assumes everything. I'm saying assume that there's in  
8 evidence that even one of Lubecore's sales was made as a  
9 result of any confusion between Lubecore and Groeneveld. If  
16:01:36 10 that's your assumption, what's your damages number?

11 **A.** Probably zero, but that's not my job. I can't measure  
12 confusion.

13 **Q.** I didn't ask you to.

14 **A.** I thought you were confusing me.

16:01:50 15 **Q.** Now, all of the figures that you -- with respect to  
16 Lubecore, can we have the -- Elmo again. With respect to?

17 **A.** Hard to see that way, counselor.

18 **Q.** I'm trying to show you the numbers.

19 **A.** Hard to see that way. I can't see the number. Thank  
16:02:28 20 you.

21 **Q.** This is what's marked as Plaintiff's Exhibit 103,  
22 correct?

23 **A.** Yes, sir, down here in the left hand corner, that's  
24 what it says.

16:02:41 25 **Q.** And this document serves as the basis for all of the

Burke - Cross

1 sales information that you used with respect to Lubecore,  
2 correct?

3 **A.** My document was not labeled that way.

4 **Q.** Is it the same document?

16:02:58 5 **A.** Let me check. Same number of companies.

6 **Q.** I'm sorry?

7 **A.** Where did you go?

8 **Q.** Oh, that's right you need to be able to see that.  
9 Sorry about that.

16:03:23 10 **A.** And if you'd move it over a little, please.

11 **Q.** Certainly.

12 **A.** My document is a little different up here at the top  
13 of this column right here.

14 **Q.** Oh, yeah, that's -- yeah, we unfortunately just did  
16:03:46 15 that ourselves because that was a misprint in the document  
16 from the beginning that was supposed to be 2009?

17 **A.** Okay. Otherwise this looks like the document I  
18 referenced.

19 **Q.** Okay. So this is the document from which all of your  
16:03:59 20 Lubecore sales data comes?

21 MS. MICHELSON: May I see a copy of that,  
22 counselor? I haven't seen that.

23 MS. ZUJKOWSKI: I just marked it in pen.

24 MS. MICHELSON: When.

16:04:08 25 MS. ZUJKOWSKI: When I was.

Burke - Cross

1 MR. ANASTOS: When you were sitting there.

2 MS. ZUJKOWSKI: That we had a typo, we  
3 testified about with our witness. It wasn't intending to do  
4 it. It there's not guilty changed.

16:04:18 5 MS. MICHELSON: Oh, okay.

6 BY MR. ANASTOS:

7 Q. Now, I want you to assume hypothetically speaking that  
8 the sales for Lubecore for the years 2009, 2010 and 2011  
9 were \$1,548,087.

16:04:51 10 A. Is that the total for the three years.

11 Q. Total -- just assume that number.

12 A. For -- for the three years or for a year?

13 Q. For three years?

14 A. For three years? So that's 2009, 10 and 11. Yes, sir  
16:05:06 15 I will assume that.

16 Q. Now you testified before that you first reduced  
17 Lubecore's sales by -- or you took 80 percent of it  
18 approximately to take away certain distributors that you  
19 didn't count in the mix; is that correct?

16:05:22 20 A. Yes, sir.

21 Q. So what's 80 percent times \$1,548,087?

22 A. 80 percent of that is -- I get \$1,238,470 rounding  
23 off.

24 Q. Now, would you apply your contribution margin to that  
16:05:47 25 number, please?

Burke - Cross

1       **A.**       I will. .3653 of that number is \$452,413.

2                   MR. ANASTOS: Thank you very much.

3                   THE WITNESS: You're welcome.

4                   THE COURT: Any redirect?

16:06:35 5                   MS. MICHELSON: No, thank you.

6                   THE COURT: Thank you, Doctor. Watch your  
7 step going down.

8                   THE WITNESS: Thank you, your Honor.

9                   THE COURT: You may call your next witness.

16:06:43 10                   MS. MICHELSON: Your Honor, we're going to  
11 just read to the jury the stipulations that were entered  
12 into by the parties in the case.

13                   THE COURT: Go ahead.

14                   MS. MICHELSON: And then we have a -- a  
16:06:53 15 proffer that we'd like to offer to the court.

16                   THE COURT: What do you mean a proffer?

17                   MS. MICHELSON: Of a witness, Brendan cane.

18                   THE COURT: Oh, all right.

19                   MS. MICHELSON: May I proceed?

16:07:10 20                   These are stipulations that both parties defense and  
21 plaintiff answered into in this matter. I'm going to just  
22 read them to you. Number 1, Groeneveld Transport  
23 Efficiency, Inc., Groeneveld Pacific West and Groeneveld  
24 Atlantic south, the Groeneveld USA companies are owned by  
16:07:34 25 Groeneveld, the USA Holding, Inc. which is in turn is owned

Burke - Cross

1 by Groeneveld group BV, B, period, V, period. Groeneveld  
2 Group is a Dutch company.

3 3. The Plaintiff in the case in this case is  
4 Groeneveld Transport Efficiency, Inc., also known as  
16:07:53 5 Groeneveld.

6 4. Groeneveld Group and its affiliates manufacture  
7 and distribute automatic lubrication systems -- I might do  
8 this over here might be better to read along.

9 I'm actually on Number 4 now. Groeneveld Group and  
16:08:26 10 its affiliates manufacture and distribute automatic  
11 lubrication system referred to as ALS, automatic greasing  
12 systems or greasing systems, and their components supplies  
13 and parts.

14 5. Groeneveld Group sells its ALS products worldwide.

16:08:45 15 6. Jan Eissis founded CPL Systems, Canada CBH or CPL  
16 Groeneveld in 1988.

17 7. Since its formation in 1988, CPL has been the  
18 Canadian distributor of Groeneveld Group's ALS products.

19 8. In 2001, Mr. Eissis sold 80 percent of CPL to  
16:09:12 20 Groeneveld Group.

21 9. In 2004, Mr. Eissis sold the remaining 20 percent  
22 of CPL to Groeneveld Group.

23 10. CPL is now owned by Groeneveld Group.

24 11. -- oh, thanks. Thanks, Steve.

16:09:33 25 11. Mr. Eissis was president of the CPL from 1988

Burke - Cross

1 until January, 2007.

2 12. In January, 2007, Mr. Eissis' affiliations with  
3 Groeneveld ended.

4 13. From 1988 until 2007 CPL sold exclusively  
16:09:58 5 Groeneveld groups ALS products.

6 14. Since 2007, CPL has continued to sell exclusively  
7 Groeneveld groups ALS products.

8 15. In 2007, Mr. Eissis formed Orlaco Crane Cam, Inc.  
9 Orlaco.

16:10:30 10 16. Orlaco changed its name to Lubecore international  
11 Lubecore on July 25, 2008.

12 17. Lubecore sells ALS products through a network of  
13 distributors.

14 18. Lubecore began to sell its ALS products in Canada  
16:10:54 15 in 2008.

16 19. Lubecore began to sell its ALS products in the  
17 United States in 2009.

18 20. ALSs are used in a variety of applications,  
19 including on over-the-road commercial trucks, sometimes  
16:11:16 20 called transport or mobile applications.

21 21. In those applications, an ALS regularly and  
22 automatically delivers to specific moving parts of large  
23 trucks, trailers, and similar vehicles, grease/lubrication,  
24 at preselected time intervals.

16:11:38 25 22. ALSs are also used in, "Off road," applications.



Burke - Cross

1           23. Some ALSs operate by air pressure and are known  
2 as pneumatic systems. Some ALSs operate by electricity.

3           24. Groeneveld sells its ALS products for transport  
4 applications.

16:12:03 5           25. One product Groeneveld sells for transport  
6 applications is an automatic single-line zero grease  
7 lubrication system known as its EP-0 system or EP-0 product.  
8 The quote zero closed quote refers to the viscosity or  
9 density of the grease.

16:12:24 10           26. A, "Zero grease is thinner than a Number 1 grease  
11 which in turn is thinner than a Number 2 grease.

12           27. Groeneveld EP-0 system has been sold in the  
13 United States since its creation by Groeneveld Group in  
14 1980.

16:12:45 15           28. Lubecore sells its ALS products through its  
16 network of distributors for transport applications.

17           29. One product that Lubecore sells for transport  
18 applications is an automatic single-line zero grease  
19 lubrication system.

16:13:07 20           30. Groeneveld conducts its business in the United  
21 States and interstate commerce.

22           31. Lubecore conducts its business in the United  
23 States and interstate commerce.

24           32. Groeneveld has sold its EP-0 system in interstate  
16:13:23 25 commerce in the United States since 1980.

Burke - Cross

1           33. Lubecore has sold its EP-0 system in interstate  
2 commerce in the United States since 2009.

3           34. Lubecore and Groeneveld attend many of the same  
4 trade shows.

16:13:41 5           35. Lubecore and Groeneveld are direct competitors in  
6 the ALS business. Those are the stipulations, your Honor,  
7 that and jurors that the parties agreed are established  
8 facts in this case.

9           THE COURT: Thank you.

16:13:54 10          MS. MICHELSON: Uncontested.

11           THE COURT: That means folks you know I told  
12 you probably don't remember but when we first started one  
13 way you get evidence is by way of stipulation. That means  
14 the parties agree that certain fact or facts are true. You  
16:14:05 15 may accept those facts and no other evidence is necessary on  
16 that point. It's up to you to decide.

17           Okay. Is there anything further?

18           MS. MICHELSON: Your Honor, our -- of course  
19 the request for Brendon Cane as we discussed. We can handle  
16:14:21 20 that how you like and other than that, we are prepared --

21           THE COURT: Are you reading off your hand.

22           MS. MICHELSON: I -- you see how I lost those  
23 other notes. I was so afraid I was going to lose another  
24 piece.

16:14:32 25          THE COURT: You and Sara Palin.

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1 MS. MICHELSON: Does she do that too.

2 THE COURT: I guess that's what they say.

3 MS. MICHELSON: I don't put the easy stuff on  
4 my hand. The hard stuff is -- we are prepared to rest our  
16:14:43 5 case, subject to moving our exhibits into evidence and we  
6 can do that at the course.

7 THE COURT: Thank you. That means you've  
8 heard all the testimony that will be offered on behalf of  
9 the Plaintiff in their case-in-chief.

16:14:54 10 Generally, there's a mandatory recess at this time but  
11 because of the late hour, we'll go ahead and proceed and see  
12 if the defense has anything to offer and we'll do the legal  
13 and exhibit materials out of your hearing tomorrow morning  
14 before we start.

16:15:10 15 So without waiving anything.

16 RIGHT1: Without prejudice to Rule 50 motion.

17 THE COURT: Without prejudice to anything,  
18 even Melissa. Is there anything you'd like to tell Melissa  
19 don't have a hard attack.

16:15:24 20 MR. ANASTOS: She is.

21 THE COURT: I know she is.

22 THE COURT: Call your first witness.

23 MR. ANASTOS: It's a videotape.

24 THE COURT: Makes it easy.

16:15:35 25 MR. ANASTOS: Our first witness is Mr. Martin

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1 Vermeulen by videotape trial deposition, Mr. Vermeulen in  
2 Korea. I hope you can -- I hope you can follow it. As good  
3 as we could possibly do.

4 MS. MICHELSON: And just for the record we  
16:15:51 5 reassert our objection to the Mr. Vermeulen.

6 THE COURT: Okay. It's overruled. How long  
7 is this?

8 MR. ANASTOS: A couple hours.

9 THE COURT: Okay. We'll go until about 5:00  
16:16:04 10 and then we'll stop. Chris, you'll let me know.

11 THE CLERK: All right. Five to 5:00.

12 (Videotape of Martin Vermeulen played.)

13 THE COURT: Can would he stop here? Okay,  
14 folks, we'll stop for the day. Again, you haven't heard  
16:49:40 15 everything so keep in mind the admonition. It's important  
16 and even though you may have heard a lot of the testimony,  
17 you don't know what the law is that applies in the case.  
18 Believe me it's important that you keep an open mind. Do  
19 not form or express any opinion or answer to what you think  
16:49:55 20 your ultimate decision is going to be until everything is  
21 submitted to you. Have a good night and see you same time  
22 same place, 8:15, L-1.

23 (Proceedings in the absence of the jury:)

24 THE COURT: A couple things. One is I'll meet  
16:50:35 25 you all here 8:00 tomorrow morning. If I expect you to go

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1 overt exhibits tonight or before tomorrow morning, however  
2 you do it and any exhibit that you object to, I'll address.  
3 If there's in objection, I don't need to address it. You  
4 understand that, Melissa.

16:50:53 5 MR. ANASTOS:

6 MS. ZUJKOWSKI: I do.

7 THE COURT: What did I say.

8 MS. ZUJKOWSKI: If there's no objection you  
9 don't need us to express that.

16:50:58 10 MR. ANASTOS: 8:00, right.

11 THE COURT: Right, right. Okay. And then you  
12 want to talk about Brendon Cane go ahead. Have a seat.

13 MS. MICHELSON: Thank you, your Honor.

14 Yes, especially in light of the cross-examination of  
16:51:11 15 Ms. Wilson concerning activity of the companies overseas, it  
16 had -- our position is that defense has opened the door as  
17 to competitive activities and occurrences overseas as well.  
18 And I believe that was the basis for the -- at least as I  
19 heard it for the Court's rulings. We also in addition to  
16:51:40 20 that, we would like to proffer and make a part of the record  
21 his transcript, in the event that you decline to change your  
22 mind on that and let us play Brendon Cane, we do want to  
23 make a proffer on the record of the transcript and the video  
24 of his testimony and we have actually marked it as an  
16:52:02 25 exhibit, and.

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1 THE COURT: You can do that.

2 MS. MICHELSON: Just so there's a record of  
3 it. And we have provided opposing counsel with a copy as  
4 well. We've marked it PX-142-1 through -- well it's the  
16:52:23 5 entirety of the trial transcript of the deposition that we  
6 took along with the disk itself which is 142.

7 THE COURT: Okay.

8 MR. ANASTOS: Your Honor, we on today  
9 Mr. Cane's testimony on two grounds. One was that there's  
16:52:36 10 nothing in it that identifies the pumps he was talking about  
11 and between the Groeneveld and Lubecore pumps we don't know  
12 which one that proven already Lubecore makes separate pumps.  
13 Secondly and perhaps more importantly is the issue that this  
14 Court's jurisdiction is does not extend outside the United  
16:52:53 15 States foreign company, CPL is a Canadian company -- excuse  
16 me lube-S a Canadian company could certainly be enjoined  
17 from certain practice in the United States if the Court so  
18 desires, but the testimony of someone outside the United  
19 States in territory where this Court did not enjoin Lubecore  
16:53:12 20 from doing anything is totally irrelevant as a matter of  
21 law.

22 Secondly, we do did not open the door to overseas  
23 testimony with are our examination with Ms. Wilson. We  
24 intending to -- to continue that line a little bit tomorrow.  
16:53:27 25 The fact that the Plaintiff has registered the Lubecore name

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1 overseas goes to our unclean hands defense. They're asking  
2 for preliminary injunction, doesn't go to confusion.

3 THE COURT: Permanent.

4 MR. ANASTOS: Permanent at this point it goes  
16:53:44 5 to unclean hands on the part of Plaintiff.

6 MS. MICHELSON:

7 THE COURT: Here we don't need to hear  
8 anything.

9 As I read cane's testimony, he said that the pumps  
16:53:53 10 looked alike. I mean you can say that right now.

11 MR. ANASTOS: We didn't say what pumps.

12 THE COURT: Know didn't. That's the other  
13 part of it, but the relevance of his testimony is -- I don't  
14 see it. He said the pumps look alike he never identified  
16:54:07 15 the pumps that are in question in this case, so.

16 MS. MICHELSON: Well, your Honor, I believe we  
17 submit additional materials on that and I won't repeat --  
18 really.

19 THE COURT: You don't have to you got it, you  
16:54:18 20 have your proffer.

21 MS. MICHELSON: Right, anything I said in the  
22 objections, but the fact that counsel just said that they  
23 have this unclean hands defense that includes activity  
24 overseas, I think that strengthens and corroborates the  
16:54:33 25 argument that activity overseas is indeed relevant here, and

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1 the reason we're --

2 THE COURT: Okay, but you didn't listen to me.

3 I said I read his testimony, and he said that the pumps

4 looked the same. Okay, we already know that. So that's --

16:54:48 5 redundant, and then Number 2, he didn't identify which pumps

6 he was talking about. So there's nothing to do with

7 overseas.

8 MS. MICHELSON: Well, your Honor, there was

9 additional evidence submitted to the Court and I -- I'm not

16:55:02 10 going to repeat it for you because it is part of the record

11 and we did submit test a part of our response to their

12 objections and we are prepared to offer certified records of

13 that as well to accompany his testimony concerning the

14 specific products that he was.

16:55:19 15 THE COURT: Right, but you wanted to

16 supplement the deposition because -- in your response to the

17 motion in limine you said they didn't ask the right

18 question, we can supplement that and correct it. It's too

19 late. All right. See you in the morning.

16:55:33 20 MS. MICHELSON: Thank you.

21 (Proceedings adjourned at 4:55 p.m.)

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1	DIRECT EXAMINATION OF GAIL WILSON	504
2	CROSS-EXAMINATION OF GAIL WILSON	543
3	REDIRECT EXAMINATION OF GAIL WILSON	592
4	RECROSS-EXAMINATION OF GAIL WILSON	612
5	DIRECT EXAMINATION OF JOHN BURKE	617
6	CROSS-EXAMINATION OF JOHN BURKE	650

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## C E R T I F I C A T E

9

I certify that the foregoing is a correct  
transcript from the record of proceedings in the  
above-entitled matter.

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s/Shirle Perkins

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